97

Supreme Court, U.S.
FILED

08-20 JUN 27 2008

OFFICE OF THE CLERK
William K. Suter, Clerk

(1)

U.S. Supreme Court No. _____

In the
Supreme Court of the United States

DEBRA SLONE
SONJA EBRON,
Petitioners,

vs.

BONNIE MYERS
PATRICIA HEATHERINGTON
A&E REAL ESTATE SALES AND MGMT, INC.
CSS SERVICES, INC.
WILLIAM W. WEST,
Respondents.

On Petition for Writ of Certiorari
to the Georgia Court of Appeals
(Georgia Court of Appeals
Cases A07A1089, A07A1406, A07A2274)

PETITION FOR WRIT OF CERTIORARI

DEBRA SLONE
SONJA EBRON
Petitioners, pro se
14718 Daybreak Drive
Lutz, FL 33559
Telephone: 813-442-6375
Date: June 27, 2008

QUESTION PRESENTED FOR REVIEW

Introductory Statement: Petitioners filed claims against Respondents for forgery, theft and violations of the Georgia RICO statute occurring in prior litigation. Without finding an abusive litigation claim in Petitioners' complaint, a Georgia court dismissed the case, finding that an exclusive remedy for abusive litigation barred the claims and that the notification required for an abusive litigation claim had not been given. The court then assessed attorney's fees based on Petitioners' assertion of their claims.

Question: Are Georgia's abusive litigation and attorney's fees statutes unconstitutional as applied to Petitioners' claims?

PARTIES TO THE PROCEEDING

Petitioners

Petitioners Debra Slone and Sonja Ebron are the Plaintiffs below, who sued Respondents for first-degree forgery, theft by deception, and violations of the Georgia RICO Act predicated on perjury and false swearing.

Respondents

Respondents are the Defendants below, a property management firm and its directors and agents. Specifically, Respondents are: A&E Real Estate Sales and Management, Inc. ("A&E"), a Georgia corporation; Bonnie Myers, president of A&E; Patricia Heatherington, secretary and treasurer of A&E; CsS Services, Inc. ("CsS"), a Georgia corporation; and William W. West, former counsel for A&E.

TABLE OF CONTENTS

Question Presented for Review i

Parties to the Proceeding ii

Table of Authorities v

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement 3

- **Factual Summary** 3
- **Procedural History** 6
- **Preservation of the Federal Question** 7

Reasons for Granting the Petition 12

- **I. Petitioners' Fourteenth Amendment Rights Have Been Violated By Arbitrary and Capricious Rulings.** 12
  - **A. The Dismissal of Petitioners' Complaint** 12
  - **B. The Assessment of Attorney's Fees** 18
  - **C. The Denial of Injunctive Relief** 21
- **II. Petitioners' Fourteenth Amendment Rights Have Been Violated By An Irrational Classification Of Civil Litigants.** 22

Conclusion 25

TABLE OF CONTENTS, continued

Appendix A: Georgia Court of Appeals Opinion ... A-1

Appendix B: Trial Court Decisions on Motions to Dismiss B-1

Appendix C: Trial Court Decision on Attorney Fees to West C-1

Appendix D: Trial Court Decision on Attorney Fees to Respondents D-1

Appendix E: Trial Court Decision on Injunctive Relief E-1

Appendix F: Georgia Supreme Court Opinions F-1

Appendix G: Georgia's Abusive Litigation and Attorney's Fees Statutes G-1

Appendix H: Petitioners' Complaint for Damages H-1

TABLE OF AUTHORITIES

CASES

Broadwell v. Municipality of San Juan, 312 F.Supp. 2d 132 (2004) 24
Burgess v. Nabers, 122 Ga. App. 445 (1970) 19
Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) 23
Commonwealth Insurance Company v. Arnold, 114 Ga. App. 835 (1966) 19
Cox v. Louisiana, 379 U.S. 559 (1965) 25
Dee v. Sweet, 218 Ga. App. 18 (1995) 17
DeKalb County v. Adams, 263 Ga. App. 201 (2003) 19
DeRossett Enterprises, Inc. v. General Electric Capital Corporation, 275 Ga. App. 728, 731-732 (2005) 19
Dombrowski v. Pfister, 380 U.S. 479 (1965) 25
E. Spire Communications, Inc. v. Baca, 269 F.Supp. 2d 1310 (2003) 24
Ellis v. Johnson, 263 Ga. 514, 516-517 (1993) 19
Flateau v. Reinhardt, Whitley & Wilmot, 220 Ga. App. 188 (1996) 15
Fowler v. Vineyard, 261 Ga. 454, 456 (1991) 16
H.J. Russell & Company v. Manuel, 264 Ga. App. 273, 276 (2003) 19
Ibrahim v. Talley & Associates, P.C., 214 Ga. App. 609 (1994) 16
Jeffries v. Turkey Run Consol. School Dist., 492 F2d 1 (1974) 23
King v. Otasco, 861 F.2d 438, 441-442 (1988) 15
Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969) 23
Lasonde v. A&E Real Estate Sales and Management, Inc., 231 Ga. App. 754 (1998) 5
Nairon v. Land, 242 Ga. App. 259, 261 (2) (2000) 17

TABLE OF AUTHORITIES, continued

Northen v. Mary Anne Frolick & Associates, 236 Ga. App. 7 (1999) 19
Owens v. Generali-US Branch, 224 Ga. App. 290 (1997) 14
Phillips v. MacDougald, 219 Ga. App. 152, 155-157 (1995) 16, 17
Rains v. Dolphin Mortgage Corporation, 241 Ga. App. 611 (1999) 18
Sharp v. Greer, Klosik & Daugherty, 256 Ga. App. 370 (2002) 15
Slone v. Myers, 288 Ga. App. 8 (2007) 1
Taylor v. Gelfand, 233 Ga. App. 835, 837 (1998) 16
Thornhill v. Alabama, 310 U.S. 88, 97 (1940) 25
Webb v. State Automobile Insurance Company, 198 Ga. App. 609, 610 (1991) 16
Yost v. Torok, 256 Ga. 92 (1986) 13

STATUTES

28 U.S.C. § 1257(a) 1
28 U.S.C. § 2403(b) 2
Official Code of Georgia Ann. § 9-15-14 ..... 2, 19
Official Code of Georgia Ann. § 9-15-14(a) 19, 20, 21
Official Code of Georgia Ann. § 9-15-14(b) 18, 19, 20
Official Code of Georgia Ann. § 16-14-3(9)(A)(xv) 4, 5, 17
Official Code of Georgia Ann. §§ 51-7-80 et seq. 2, 12
Official Code of Georgia Ann. § 51-7-81 16
Official Code of Georgia Ann. § 51-7-82(a) 12
Official Code of Georgia Ann. § 51-7-84(a) 12, 14
Official Code of Georgia Ann. § 51-7-85 ..... passim

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition this Court for a writ of certiorari to review the opinion and judgment rendered by the Georgia Court of Appeals in three consolidated cases: Slone v. Myers (A07A1089), Slone v. West (A07A1406), and Slone v. Myers (A07A2274).

Opinions Below

The decision advanced for review is reported at *Slone v. Myers*, 288 Ga. App. 8 (2007) (2007 Ga. App. LEXIS 1077) and is attached as Appendix A. The four underlying decisions of the trial court are unreported but are included herein as Appendices B-E.

Statement of Jurisdiction

The judgment of the Georgia Court of Appeals was entered on October 3, 2007, reconsideration denied October 24, 2007. The Georgia Supreme Court denied a petition for writ of certiorari on February 25, 2008, reconsideration denied March 31, 2008. App. F. On April 18, 2008, Petitioners filed in the Georgia Court of Appeals a notice of intent to petition this Court for a writ of certiorari. This Court has jurisdiction under 28 U.S.C. § 1257(a).

Constitutional and Statutory Provisions Involved

This case involves provisions for due process and equal protection under the Fourteenth

Amendment of the Constitution of the United States. Section 1 of the Fourteenth Amendment provides, in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This case also involves Georgia's abusive litigation statutes, Official Code of Georgia Ann. §§ 51-7-80 et seq., and its attorney's fees statute, Official Code of Georgia Ann. § 9-15-14, all listed in Appendix G. The abusive litigation statutes provide, in pertinent part, that one is liable for abusive litigation when one participates in a malicious and unjustified lawsuit, and that those statutes provide the exclusive remedy for claims for abusive litigation. The attorney's fee statute provides for mandatory sanctions for a claim completely lacking any justiciable issue of law or fact and discretionary sanctions upon motion for an action lacking substantial justification or interposed for harassment or delay.

28 U.S.C. § 2403(b) may apply to this case as it draws into question the constitutionality of Georgia's abusive litigation statutes and its attorney's fees statute. Neither the state, nor any agency, officer, or employee thereof, is a party. The Attorney General for the State of Georgia has been notified pursuant to Rule 29.4(c).

Statement

Factual Summary

This case arises from a dispossessory action against Petitioners in which the plaintiff, A&E Real Estate Sales and Management, Inc. ("A&E"), a property management firm, is alleged to have solicited a false statement on a dispossessory affidavit. $R_1$16[1]. According to Petitioners, A&E used a tenant processing company, CsS Services, Inc. ("CsS"), to file a dispossessory warrant against Petitioners, claiming falsely that A&E owned the property for which possession was sought and that monies were due A&E. $R_1$140. When Petitioners answered the claim, William W. West, a member of the State Bar of Georgia, appeared for A&E. $R_1$16. At trial, in addition to the falsely sworn affidavit, West is alleged to have introduced into evidence a rent check altered by the property owner. $R_1$16. A&E prevailed before a magistrate, but Petitioners sought de novo appeal in a court of record after paying over $3,000 into the court's registry to stay the eviction. $R_1$16-17. The court ultimately dismissed the action for failure to join the owner of the property. $R_1$17.

Discovery in the case suggested to Petitioners (1) that the false statements were knowingly and willfully solicited, made and used, respectively, by A&E, CsS and West; (2) that a decade-long pattern of such acts, by the same actors in the same roles, was evident; (3) that Bonnie Myers and Patricia Heatherington, A&E's principals, knowingly possessed and uttered an altered rent check in the

[1] R_1 refers to Appellants' Designation of Record in Georgia Court of Appeals Case A07A1089.

proceeding; and (4) that the acts were motivated by the parties' desire to shield property owners from tenant-related litigation. $R_1$18; $R_1$148-151; $R_1$16; $R_1$145. Petitioners attempted to assert claims for violations of the Georgia RICO Act[2] against A&E, CsS and West but were denied leave to join additional parties. Following dismissal of the action, Petitioners asserted their RICO claims as a new action in the same court, with additional claims against A&E's principals and West for first-degree forgery and theft by deception. $R_1$12-34.

In their complaint, Petitioners alleged that A&E, CsS and West conducted an enterprise to illegally evict Clayton County tenants in the interests of absent property owners. Petitioners also alleged that Myers, Heatherington and West knowingly possessed and uttered a false document and, through deception, attempted to take monies belonging to Petitioners. For a plaintiff to prevail in a Clayton County dispossessory action seeking unpaid rents, he must show that he owns the subject property, that the tenants are holding over after being lawfully commanded to leave, and that rents owed him by the tenants are due and unpaid. $R_1$28. In hundreds of dispossessory actions filed in Clayton County over the last decade, CsS, at A&E's behest, had falsely sworn that A&E owned the properties he sought to possess and that unpaid rents were due A&E. A significant portion of these actions had been answered by the tenants, and West had usually been sent by A&E to secure judgments against those

[2] Unlike the federal RICO statutes, Georgia's RICO predicates include perjury, false swearing and related acts at Official Code of Georgia Ann. § 16-14-3(9)(A)(xv).

tenants. Petitioners' RICO claims were predicated on acts of perjury pursuant to Official Code of Georgia Ann. § 16-14-3(9)(A)(xv). Their forgery and theft claims were grounded in the use of a false document and false statements in a judicial proceeding.

For pecuniary gain, according to Petitioners, Respondents had maintained their dispossessory scheme with impunity ten years after a Clayton County state court gave notice that property owners, not A&E, were the only real parties in interest in A&E's eviction cases. *Lasonde v. A&E Real Estate Sales and Management, Inc.*, 231 Ga. App. 754 (1998). In 1997, that court found it necessary to sua sponte substitute the property owner as plaintiff in an A&E eviction case in order to enter a default judgment against the tenant. The substitution was necessitated by the affidavit judicially approved for use in Clayton County, which specifically requires the plaintiff to own the property. That is, while A&E may have had a right to represent owners in eviction cases, it never had a right to claim ownership of the property in such cases. *Lasonde* served a dual purpose: (1) to demonstrate materiality of the false statements, and (2) to highlight Respondents' scienter in subsequent acts of soliciting, making and using the false statements. $R_1$157-158. Motive for the continuation of this scheme was made evident by Heatherington, who testified in the dispossessory action that A&E's clients "don't even want to know about" tenant evictions. "They just want their money." $R_1$145.

Procedural History

Alleging the use of forged evidence and a practice of knowingly soliciting, making and using false statements in dispossessory actions, Slone and Ebron sued A&E, its directors Myers and Heatherington, CsS and West for first-degree forgery, theft by deception, and violations of the Georgia RICO Act. $R_1$12 (included herein as App. H). The trial court dismissed the case, finding the claims to be "in the nature of abusive litigation" and that the required notice of an abusive litigation claim had not been provided the defendants. $R_1$177,181 (included herein as App. B). The following day, the court awarded attorney's fees to West in the prior dispossessory action, where Petitioners' claims had first been lodged but not adjudicated. $R_2$361[3] (included herein as App. C). While Petitioners sought separate review of those decisions in the appellate court (Cases A07A1089 and A07A1406), Respondents sought and received attorney's fees in the RICO action. $R_3$181[4] (included herein as App. D). The trial court denied Petitioners' request for injunctive relief pending appeal, and a request for review of the latter two rulings ensued (Case A07A2274). $R_3$218 (included herein as App. E).

The appellate court consolidated the three cases and (i) affirmed the dismissal of the Georgia RICO action, (ii) declined to reverse the award of fees to West in the dispossessory action (remanding for hearing on the necessity of fees), (iii) affirmed the

[3] R_2 refers to Appellants' Designation of Record in Georgia Court of Appeals Case A07A1406.

[4] R_3 refers to Appellants' Designation of Record in Georgia Court of Appeals Case A07A2274.

award of fees in the Georgia RICO action, and (iv) affirmed the denial of injunctive relief in the Georgia RICO action. App. A. Petitioners seek review of this decision, as it presents an issue of great concern, gravity and importance to the public.

Preservation of the Federal Question

Petitioners ask this Court to review the decision of the Georgia Court of Appeals for violations of Petitioners' Fourteenth Amendment rights. Substantive due process requires a fundamental fairness in the procedures used by the government to take the property of citizens. Equal protection requires statutory precision and guarantees similar treatment to those similarly situated. To preserve this federal question in the trial court, in the appellate court, and in the Georgia Supreme Court, Petitioners questioned the fairness of the process, challenged the precision of the statutory definitions, and cited voluminous case law showing disparate treatment.

Petitioners raised the issues of fundamental fairness and equitable treatment throughout the proceedings below, including in the following:

- "Slone and Ebron neither allege nor seek remedies for abusive litigation, and Georgia law does not recognize a Defendant's right to alter a Plaintiff's complaint." *Plaintiffs' Response to William W. West's Motion to Dismiss*, 2006CV04199-8, Clayton County Superior Court, P. 1.

- "Slone and Ebron have adequately pled the elements of civil RICO, first-degree forgery and theft by deception, not abusive litigation. The claims pled by Slone and Ebron stand on their own merits and are fully vested as a legal action." *Plaintiffs' Response to William W. West's Motion to Dismiss*, 2006CV04199-8, Clayton County Superior Court, P. 1.

- "Absent a sole and exclusive remedy for torts committed during litigation, which O.C.G.A. § 51-7-85 does not provide, Slone and Ebron have a due-process right to a decision on the merits of their claims." *Motion for Reconsideration*, Georgia Court of Appeals, P.8.

- "There is insufficient evidence for the Court's finding that the instant action is one for abusive litigation, O.C.G.A. §51-7-85 does not apply, and West's Motion to Dismiss must fail." *Motion for Reconsideration*, 2006CV04199-8, Clayton County Superior Court, P. 7-8.

- "West's preference for an abusive litigation claim cannot transform the instant case into one which must be pursued through O.C.G.A. §51-7-80 et seq, even if Slone's and Ebron's claims are somehow redolent of abusive litigation." *Plaintiffs' Response to William W. West's Motion to Dismiss*, 2006CV04199-8, Clayton County Superior Court, P. 2.

- "Since, in addition to showing grounds, Slone and Ebron allege neither frivolity nor vexation in Defendants' filing of the dispossessory action, lack of substantial justification is not alleged

and an essential element of a claim for abusive litigation is absent. Ipso facto, Plaintiffs' Complaint fails to properly plead a claim for abusive litigation, and the Court has mischaracterized this action as such." *Memorandum of Law in Support of Motion for Reconsideration of West's Motion to Dismiss*, 2006CV04199-8, Clayton County Superior Court, P. 6.

- "But while a court may find a summary judgment motion lacking in merit, the filing of a 'voluminous' motion for partial summary judgment with or without discovery is within Plaintiffs' statutory rights in this action. A party cannot be charged with harassment for exercising their statutory rights." *Plaintiffs' Response to William W. West's Motion for Attorney's Fees*, 2006CV04199-8, Clayton County Superior Court, P. 6.

- "In addition, such affirmation would rob future Appellees' victims of their rights to due process in Georgia's courts." *Reply Brief of Appellants*, Georgia Court of Appeals, A07A1089, P. 15.

- "There is insufficient evidence or authority to support the trial court's displacement of Appellants' claims with an abusive litigation claim." *Brief of Appellants*, Georgia Court of Appeals, A07A1089, P. 26.

- "To avoid the manifest injustice represented by this dismissal, Slone and Ebron respectfully request that this Court reverse the trial court's

ruling."*Brief of Appellants*, Georgia Court of Appeals, A07A1089, P. 26-27.

- "The inescapable conclusion of the trial court's ruling is that an intentional civil wrong committed under the cover of a judicial proceeding is subject to a lesser penalty than one committed on the street." *Brief of Appellants*, Georgia Court of Appeals, A07A1089, P. 27.

- "Thus, there is no authority for tort displacement in this case, and the exclusive remedy and notification requirements do not apply. Slone and Ebron now file this Appeal because the trial court's dismissal of their claims is clear error and completely at odds with Georgia law." *Brief of Appellants*, Georgia Court of Appeals, A07A1089, P. 6.

- "The trial court's ruling cannot be affirmed as it defies the legislative intent of the abusive litigation statutes, the U.S. and Georgia Constitutions, and common sense." *Brief of Appellants*, Georgia Court of Appeals, A07A1089, P. 27.

- "Failure to grant certiorari in this case will result in a shield for malicious and willful misconduct in Georgia's courts, suppression of civil litigation by sanctions for nonsanctionable conduct, arbitrary and unreliable court decisions whereby the Court of Appeals may pick and choose the arguments it will consider..." *Petitioners' Reply to Briefs in*

Response, S08C0413, Supreme Court of the State of Georgia, P. 5.

- "Finally, the appellate court's decision requires review because the current state of the law is that an intentional civil wrong committed under the cover of a judicial proceeding is subject to a lesser penalty than one committed on the street. The decision creates a separate but unequal path to justice for a class of persons injured as litigants and thus denies equal protection to that class. It also invites all manner of criminality to reside with impunity inside the judicial system. Since there is no quid pro quo accompanying the exclusive remedy of abusive litigation, the State has taken Petitioners' property without just compensation and due process. This shield for tortious and felonious behavior cannot be the legislature's intent as it violates the 14th Amendment's requirements for procedural and substantive due process and equal protection, and this Court must review the appellate court's conclusion to the contrary." *Petitioners' Motion for Reconsideration*, S08C0413, Supreme Court of the State of Georgia, P. 3.

- "Again, an unauthorized sanction for a claim that was never adjudicated on the merits is unconscionable, and this Court must review the appellate court's decision." *Petitioners' Motion for Reconsideration*, S08C0413, Supreme Court of the State of Georgia, P. 4.

While no Georgia court explicitly ruled on the Fourteenth Amendment question raised, the orders

themselves decided the question in ruling against Petitioners.

Reasons for Granting the Petition

The Court should grant this petition because the decision of the Georgia Court of Appeals fully resolves a federal issue that is appropriate for certiorari. The decision of the Georgia Court of Appeals warrants this Court's review because it is at such variance with preexisting state law as to shock the conscience, it is in violation of Petitioners' Fourteenth Amendment rights to substantive due process and equal protection, and it chills all reasonable expectations of access to the courts.

I. Petitioners' Fourteenth Amendment Rights Have Been Violated By Arbitrary and Capricious Rulings.

A. The Dismissal of Petitioners' Complaint

Georgia's abusive litigation statutes, Official Code of Georgia Ann. §§ 51-7-80 et seq., provide civil liability and an exclusive remedy for the tort of soliciting, initiating or continuing a malicious and unjustified lawsuit. Official Code of Georgia Ann. § 51-7-84(a) requires that prior notice be given to each person against whom an abusive litigation claim is asserted, but a defense to the claim is provided by Official Code of Georgia Ann. § 51-7-82(a) if such person abandons the litigation within 30 days of receipt of notice.

The legislative intent of Official Code of Georgia Ann. §§ 51-7-80 et seq. is amply stated by the Georgia Supreme Court in its redefinition of the tort of abusive litigation and its encouragement of new legislation. *Yost v. Torok*, 256 Ga. 92 (1986) ("There is a continuing concern over the abuse of the judicial process, and a justifiable interest in its prevention. There is proper apprehension over improper defensive tactics (protracted pleadings, prolonged discovery, massive depositions, and the like), which are designed not to discover the truth, but rather to exhaust the claimant. There is the need to contain the corrupting effect of groundless claims, and of those which, while having some merit, are brought with the principal intent or effect of harassment, coercion, or embarrassment.")

The abusive litigation statutes are designed to deter improper litigation tactics brought with intent to harass, coerce or embarrass, such as "protracted pleadings, prolonged discovery, massive depositions, and the like," not to remedy statutory torts. As a derogation of common law, the abusive litigation statutes should be strictly construed to apply only to litigation brought with malice and without substantial justification. The decision of the Georgia Court of Appeals represents new law on the issue of abusive litigation. Such a substitution of claims is not seen in cases prior to the instant case. Further, Georgia's abusive litigation statutes are unique in state jurisprudence. While other states have causes of action for abuse of process, only Georgia combines an exclusive remedy provision, a notification requirement, and an imprecise statutory definition in a way that allows for any claim arising in the course of civil litigation to be arbitrarily dismissed.

Compare the sanctions for abusive litigation in Federal Rules of Civil Procedure 11.

In Case A07A1089, the Georgia Court of Appeals on de novo review affirmed the trial court's dismissal of Petitioners' claims, finding an argument in Petitioners' brief to be "the essence of an abusive litigation claim," subject to the exclusive remedy of Official Code of Georgia Ann. § 51-7-85, and that no notice pursuant to Official Code of Georgia Ann. § 51-7-84(a) had been provided to Respondents. App. A7-A8. But Petitioners never alleged that Respondents engaged in a malicious and unjustified lawsuit. Indeed, the factual allegations in Petitioners' complaint were sufficient to show substantial justification for the dispossessory action.[5] There was never an abusive litigation claim in this case because lack of justification is an essential element of abusive litigation.

Statutory definitions give structure and precision to the law. The elements of a tort or crime cannot be overlooked when tort preemption is at issue. No showing that Petitioners' claims met the elements of abusive litigation was ever attempted.

---

[5] In the section of the complaint entitled "Factual Allegations Common to All Counts," Slone and Ebron alleged that "A&E entered into a contract with Connie J. Wright to manage the subject property." R$_1$15, ¶25 (see App. F4). In the same section, Slone and Ebron alleged that "A&E received from the property owner instructions to evict Slone and Ebron, along with two rent checks executed by Slone and Ebron, one that had been returned for insufficient funds and another estopped from payment..." R$_1$15,16, ¶28 (see App. F4-F5). These allegations provided sufficient grounds upon which to file the dispossessory action. See *Owens v. Generali-US Branch*, 224 Ga. App. 290 (1997), an abusive litigation case in which, despite statutory and case authorities denying an insurer's right to subrogate his insured's claim, the court held the insurer nevertheless had substantial justification to file the action.

That the alleged torts occurred in the course of civil litigation was deemed sufficient to subject the claims to the abusive litigation statutes. Neither the trial court nor the appellate court found a claim for abusive litigation in Petitioners' complaint; rather, the trial court found a claim "in the nature of" abusive litigation, and the appellate court found "the essence of" abusive litigation[6]. This language is more than a matter of semantics because abusive litigation is defined by statute and Petitioners' factual allegations fail to meet that definition.

Georgia law provides an exclusive remedy for claims of abusive litigation as defined by statute, not claims "in the nature of" or "the essence of" abusive litigation. Nor is there a notification requirement for claims "in the nature of" or "the essence of" abusive litigation, so dismissal of Petitioners' claims for failure of notification is capricious and violates substantive due process. Compare *Sharp v. Greer, Klosik & Daugherty*, 256 Ga. App. 370 (2002) and *Flateau v. Reinhardt, Whitley & Wilmot*, 220 Ga. App. 188 (1996), each involving an abusive litigation claim and additional claims not precluded by Official Code of Georgia Ann. § 51-7-85.

According to Georgia law, claim preclusion requires that the party against whom the doctrine is raised also must have had a full and fair opportunity

[6] "First, a court's determination of the 'essence' of the plaintiff's claim is likely to be highly metaphysical... Plaintiffs, of course, cannot be allowed to obtain trials for intentional tort claims... merely by engaging in artful pleading... If, however, a claim can plausibly withstand a motion to dismiss or for summary judgment, it cannot be treated as a mere rewording of a barred claim. Instead, therefore, of probing for the essence of King's suit, the district court should have analyzed each of his claims on its own merits." *King v. Otasco*, 861 F.2d 438, 441-442 (1988).

to litigate the issues. *Fowler v. Vineyard*, 261 Ga. 454, 456 (1991). Neither the trial court nor the appellate court has identified a deficiency in Petitioners' claims prior to dismissing or affirming dismissal. Compare *Ibrahim v. Talley & Associates, P.C.*, 214 Ga. App. 609 (1994), where Ibrahim's claim for forgery was adjudicated (and defeated) prior to the assertion of his forgery-based claim for abusive litigation.[7] Petitioners deserve and demand the same consideration, as guaranteed by the Fourteenth Amendment.

In *Phillips v. MacDougald*, 219 Ga. App. 152, 155-157 (1995), the Court of Appeals held that a claim for tortious interference with contract predicated on a claim for abusive litigation was precluded by Official Code of Georgia Ann. § 51-7-85, the exclusive remedy provision. "Clearly, the tortious interference claim ... is grounded on a contention that the lawsuit at issue was improperly filed being without legitimate legal foundation." *Phillips* at 156. The Court of Appeals later held that claims for intentional and negligent infliction of emotional distress were also precluded as remedies for abusive litigation where "the gravamen of both claims is the

[7] Also compare *Webb v. State Automobile Insurance Company*, 198 Ga. App. 609, 610 (1991) ("We cannot agree with appellant that her allegations regarding verbal threats or coercive behavior by appellee or its institution of legal proceedings (outside of a claim for abusive litigation) alone can give rise to a cause of action under the circumstances presented here.") and *Taylor v. Gelfand*, 233 Ga. App. 835, 837 (1998) ("Thus, the overriding issue under these circumstances is whether Gelfand fairly took control of Taylor's bank account under legal process or engaged in abusive litigation in violation of OCGA § 51-7-81. Taylor's 'simple allegations of conversion do not address this question, and the court is of the opinion that conversion will consequently not lie.' (citation omitted)")

defendants' act of filing an abusive lawsuit." *Nairon v. Land*, 242 Ga. App. 259, 261 (2) (2000).

Both *Phillips* and *Nairon* require that a precluded claim be "predicated upon" or "grounded in" a claim for abusive litigation. These terms describe a logical construction where abusive litigation is the foundational or fundamental claim and is res judicata as to claims resting upon that foundation, such claims being mere specifications of damages from the alleged abusive litigation. That is, a claim is grounded in abusive litigation and may be precluded by Official Code of Georgia Ann. § 51-7-85 only where it is fully decided by adjudication of the abusive litigation claim. In the instant case, a finding that Respondents had engaged in abusive litigation would not determine or even impinge on their liability for forgery, theft or Georgia RICO violations. While the claims asserted by Petitioners may arise from the same milieu as abusive litigation, they can not be precluded by Official Code of Georgia Ann. § 51-7-85 because they can not be logically predicated on an abusive litigation claim.

If claims not predicated upon abusive litigation may be precluded by Official Code of Georgia Ann. § 51-7-85 without adjudication on the merits, then the abusive litigation statutes operate as a sole and exclusive remedy for any tort occurring in litigation, akin to the statutory regimen and employment-related preemption authority of the Worker's Compensation Act. This interpretation suggests that perjury, for instance, is an act of abusive litigation, which contradicts Official Code of Georgia Ann. § 16-14-3(9)(A)(xv) and cases built upon it. See *Dee v. Sweet*, 218 Ga. App. 18 (1995), where the appellate

court affirmed a jury's verdict of liability for civil RICO violations based in part on perjury in an arrest warrant for theft, and *Rains v. Dolphin Mortgage Corporation*, 241 Ga. App. 611 (1999), where the appellate court reversed a grant of summary judgment to Dolphin, finding evidence that Dolphin had ordered an employee to commit perjury at deposition. Both cases demonstrate that torts are not subject to or shielded by Official Code of Georgia Ann. § 51-7-85 by dint of their commission in litigation.

A violation of substantive due process is a denial of access to the courts. Access to the courts means nothing if it allows the state to arbitrarily substitute or preempt a citizen's claim for an unasserted and ill-fitting one. Arbitrary tort preemption is thus a violation of substantive due process. The dismissal of Petitioners' claims was not only incorrect but was at such variance with statutory and case law as to be arbitrary and capricious and thus in violation of Petitioners' Fourteenth Amendment rights to substantive due process and equal protection.

B. The Assessment of Attorney's Fees

In declining to reverse awards of attorney's fees made without statutory authority, the Court of Appeals' decision threatens to suppress civil litigation by authorizing sanctions for nonsanctionable conduct. Official Code of Georgia Ann. § 9-15-14(b) provides that attorney's fees may be awarded "if, upon the motion of any party or the court itself," the court finds a lack of substantial justification or other sanctionable conduct. No

personal judgment may be awarded to a person not a party to a case. *Burgess v. Nabers*, 122 Ga. App. 445 (1970).

Official Code of Georgia Ann. § 9-15-14(a) provides that "attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim, defense, or other position" completely lacking in justiciable issue. A trial court's suppression of evidence that would provide a defense to a charge of lack of substantial justification is reversible error. *Northen v. Mary Anne Frolick & Associates*, 236 Ga. App. 7 (1999). An award under Official Code of Georgia Ann. § 9-15-14(a) must be supported by specific findings of sanctionable conduct. *DeKalb County v. Adams*, 263 Ga. App. 201 (2003); *DeRossett Enterprises, Inc. v. General Electric Capital Corporation*, 275 Ga. App. 728, 731-732 (2005); *H.J. Russell & Company v. Manuel*, 264 Ga. App. 273, 276 (2003). An award under Official Code of Georgia Ann. § 9-15-14(a) must be made to individual parties for definite sums. *Burgess*, supra; *Commonwealth Insurance Company v. Arnold*, 114 Ga. App. 835 (1966) (A personal judgment must be "definite and certain."). No award of attorney's fees is justified where there is arguable support for the sanctioned position. *Ellis v. Johnson*, 263 Ga. 514, 516-517 (1993).

In Case A07A1406, the Court of Appeals declined to reverse an award of attorney's fees to West in the dispossessory action, which Petitioners argued was unauthorized to non-parties under Official Code of Georgia Ann. § 9-15-14, by declaring that "OCGA § 9-15-14(b) contains no such

restriction." App. A9. In Case A07A2274, the Court of Appeals affirmed awards under Official Code of Georgia Ann. § 9-15-14(a) in the RICO action based on the lesser standard for awards under Official Code of Georgia Ann. § 9-15-14(b). App. A13. The Court of Appeals affirmed these latter awards where the superior court had quashed subpoenas for testimony that would have provided evidence of substantial justification for Petitioners' position. App. A11-A12. The Court of Appeals affirmed these awards without identifying any evidence of sanctionable conduct. App. A13. The Court of Appeals affirmed the awards under Official Code of Georgia Ann. § 9-15-14(a) "in the amount of $8,376.88 to Laura Morris for Myers, Heatherington[,] and A & E..., $3,980.00 to Martin Jones, Esq. for William West, and $3,806.25 to William S. Dominy for CSS" either to non-parties for the specified amounts or to individual Respondents for unspecified amounts. App. A10-A11.

Neither the trial court nor any party moved for attorney's fees in the dispossessory action, as required by Official Code of Georgia Ann. § 9-15-14(b), but no award under the statute could be made to West, a non-party. The award under Official Code of Georgia Ann. § 9-15-14(a) was made without finding complete lack of justiciability, but awards under the statute require a finding of "complete absence of any justiciable issue of law or fact." The trial court abused its discretion in suppressing the only evidence offered in Petitioners' defense, but a party opposing an award of attorney's fees must be allowed to present evidence justifying their positions. The Court of Appeals failed to identify evidence supporting an award under Official Code of Georgia Ann. § 9-15-14(a), but awards under the statute

require evidence of sanctionable conduct. The award was made either to attorneys for Respondents or to Respondents for unspecified sums, but awards under Official Code of Georgia Ann. § 9-15-14(a) cannot be made to non-parties and cannot be made for indefinite sums.

The assessment of attorney's fees against Petitioners was not only incorrect but was at such variance with statutory and case law as to be arbitrary and capricious and thus in violation of Petitioners' Fourteenth Amendment rights to substantive due process and equal protection.

C. The Denial of Injunctive Relief

The trial court's denial of Petitioners' motion for injunctive relief offers the clearest evidence of arbitrary and capricious rulings. In the appellate court, Petitioners assigned error to the trial court's denial of injunctive relief in Case A07A2274, arguing that their claims were legally protectable as property and that A&E's continuing violations of a criminal statute injured the viability of those claims. "Plaintiffs' property right in their claims relies upon the enforceability of the RICO statutes where violations are predicated on perjury and false swearing. If A&E is not enjoined from attacking the statutes through continuing acts, irreparable harm will result in the form of damaged claims." *Plaintiffs' Application for Temporary Restraining Order and Motion for Interlocutory Injunction*, 2006CV04199-8, Clayton County Superior Court, P. 4. The Court of Appeals ignored the argument, agreeing with the trial court's finding that Petitioners lacked standing because they were no longer residents of Clayton

County. Like the trial court, the Court of Appeals refused to recognize or consider the property that Petitioners presented for protection, the cause of action created by the Georgia RICO statutes, preferring to base Petitioners' standing on the occupation of physical premises.

II. Petitioners' Fourteenth Amendment Rights Have Been Violated By An Irrational Classification Of Civil Litigants.

The trial court barred all claims in this action – for forgery, theft and RICO violations, each with differing sets of elements and factual allegations to match – because they shared the common denominator of having arisen during the course of civil litigation. The appellate court specifically equated any tort committed in civil litigation with abusive litigation. In affirming the dismissal, the appellate court noted, "The wrongful acts which they alleged, however, all occurred during litigation of the dispossessory action." App. A6. In the dispossessory action, Petitioners were tenants accused of nonpayment of rent, which led to a presumption of economic status[8]. Though not a suspect class, economic status does require a rational basis for any legislation that discriminates. One of the reasons that race, sex and economic status are suspect classifications is that an individual has no control over that aspect of his character, so historical bias and discrimination against such classes merit added

[8] For instance, in his Answer to Petitioners' complaint, West raised as a defense the potential for requested attorney's fees in the dispossessory action to bar Petitioners (who he presumed would be unable to pay) from pursuing their claim.

protection. As defendants in the dispossessory action, Petitioners similarly had no control over that status.

Petitioners represent a class of injured civil litigants who are treated differently than those who are not civil litigants but are injured by the same acts. For instance, when a Georgia person not a party to civil litigation is injured by a pattern of perjury occurring within that litigation, he may sue for state RICO violations. If, however, he is party to the suit, his only claim is for abusive litigation. There is no compelling state interest in this discrimination. This classification and discrimination of civil defendants has no rational basis or compelling state interest.

Substantive due process requires that state action which deprives one of life, liberty, or property have rational basis, and the reason for deprivation may not be so inadequate that judiciary will characterize it as "arbitrary." *Jeffries v. Turkey Run Consol. School Dist.*, 492 F2d 1 (1974). See also *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) ("A state may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."), and *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969) ("In determining whether or not a state law violates the Equal Protection Clause, a court must consider the facts and circumstances behind the law, the interests which the state claims to be protecting, and the interests of those who are disadvantaged by the classification.")

In allowing only claims for abusive litigation for injuries caused in court proceedings, Georgia administers the abusive litigation statutes in a purposefully discriminatory way. Thus, the abusive litigation statutes are a violation of equal protection "as applied" to Petitioners and similarly situated civil litigants. *Broadwell v. Municipality of San Juan*, 312 F.Supp.2d 132 (2004) ("Under substantive due process analysis, the state cannot enact legislation that is arbitrary, capricious or without a rational or reasonable relationship to the public health, safety, morals, or general welfare."); *E. Spire Communications, Inc. v. Baca*, 269 F.Supp.2d 1310 (2003) ("Substantive due process ensures that a state will not deprive a party of property for an arbitrary reason.")

Petitioners had reasonable expectations that their asserted claims were meritorious based on the statutory definitions of the asserted torts. Petitioners had no reasonable expectation of an abusive litigation claim because the factual allegations did not meet the statutory elements of such a claim. Petitioners' allegations met the elements of RICO, forgery and theft, but these claims were replaced by an abusive litigation claim, whose elements the allegations did not meet. Petitioners were assessed sanctions without regard to the statutory requirements for attorney's fees. This represents a denial of access to the Georgia courts and chills any expectation of access to Georgia courts.

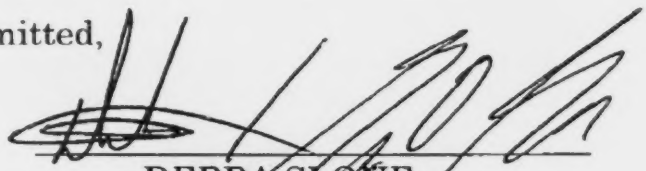
Georgia's abusive litigation and attorney's fees statutes are unconstitutional as applied because their application is irrational and satisfies no legitimate governmental interest. A law will be

determined to be void on its face if it "does not aim specifically at evils within the allowable area of [government] control but ... sweeps within its ambit other activities that constitute an exercise [of protected rights]." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). In the absence of this doctrine the statute itself will not be considered void but its application to particular conduct may be determined to be invalid on grounds of vagueness in that the actor did not have reasonable notice that the particular conduct was proscribed. In such instances the statute is "invalid or unconstitutional as applied," rather than on its face. *Cox v. Louisiana*, 379 U.S. 559 (1965). See also *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

Conclusion

The Court should grant this petition for certiorari.

Respectfully submitted,



DEBRA SLONE
SONJA EBRON
Petitioners, pro se
14718 Daybreak Drive
Lutz, FL 33559
Telephone: 813- 442-6375

Date: June 27, 2008

APPENDIX A

Georgia Court of Appeals Opinion

THIRD DIVISION
BLACKBURN, P.J.
RUFFIN AND BERNES, JJ.

NOTICE: Motions for reconsideration must be physically received in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, September 5, 2002) http://www.gaappeals.us/rules/

October 3, 2007

In the Court of Appeals of Georgia

A07A1089, SLONE, ET AL. v. MYERS, ET AL
RU-054

A07A2274, SLONE, ET AL. v. WEST
RU-070

A07A1406, SLONE, ET AL. v. MYERS, ET AL
RU-111

Ruffin, Judge.

In three related appeals, Debra Slone and Sonja Ebron, acting pro se, appeal the dismissal of their complaint against various parties who were involved in a dispossessory action against them, the

award of attorney fees under OCGA § 9-15-14, and the denial of their subsequent application for injunctive relief. For reasons that follow, we affirm in part and vacate in part.

On August 16, 2005, A & E Real Estate Sales and Management, Inc. ("A & E") brought a dispossessory action against Slone and Ebron (the "dispossessory action"). William West served as counsel for A & E. Slone and Ebron filed an answer and counterclaim, arguing that they had paid their rent and that the property owner and A & E "maliciously used and abused [the] legal process." The magistrate court entered judgment for A & E and granted it a writ of possession; it found against Slone and Ebron on their counterclaim, stating that "no evidence" had been presented.

Slone and Ebron appealed to the Superior Court of Clayton County in September 2005 (the "second action"). By December 2005, they had vacated the property, surrendering their claims to occupancy but maintaining all their other claims. In July 2006, Slone and Ebron sought to add CSS Services, Inc. ("CSS"), West, and "John Does 1-10" as defendants in the action. [1] On September 12, 2006, the superior court dismissed the case for failure to join the owner of the property as an indispensable

[1] In January 2006, Slone and Ebron had served a "Motion to Amend Counterclaims" on West, characterizing him as a "counter-defendant."

party after being given the opportunity to do so, and did not allow them to add any other defendants. On November 28, 2006, the superior court awarded West $ 4,200 in attorney fees under OCGA § 9-15-14, finding "a complete absence of any justiciable issue of law or fact" as to the claim Slone and Ebron sought to bring against West and determining that the claim "was substantially groundless and was interposed for harassment and delay."

Slone and Ebron then filed another complaint on October 6, 2006, in the Superior Court of Clayton County against A & E, Bonnie Myers, Patricia Heatherington, CSS, and West, alleging that Slone and Ebron "are the victims of a conspiracy to bolster the fortunes of a property management company that unjustly enriches itself by illegally dispossessing tenants" (the "third action"). They asserted claims for violation of the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, forgery and theft by deception, all arising from the dispossessory action against them. The superior court dismissed the action as to all the defendants, [2] concluding that Slone and Ebron's claims were, in effect, for abusive litigation, and that they had not complied with the notice requirement of OCGA § 51-7-84 (a), which is a

[2] West's motion to dismiss was granted on November 27, 2006 and the remaining defendants were dismissed on December 5, 2006.

condition precedent to maintaining an action for abusive litigation.

Slone and Ebron filed a motion for reconsideration of the dismissal of West, which the superior court denied on January 5, 2007. West, Myers, Heatherington, A & E, and CSS moved for the award of attorney fees against Slone and Ebron, and the trial court granted their motions. Slone and Ebron then sought a temporary restraining order and interlocutory injunction against A & E, asking that the trial court "restrain [A & E] from knowingly and willfully making or soliciting false statements on Clayton County dispossessory affidavits." The trial court denied the motion, finding that Slone and Ebron, who were living in St. Petersburg, Florida, lacked standing because they "have not alleged that either of them is subject to a current or future dispossessory action in Clayton County, Georgia."

The following appeals ensued.

Case No. A07A1089

In this appeal, Slone and Ebron allege that the trial court erred in dismissing their complaint in the third action for failure to comply with the notice requirement of the abusive litigation statute because, they contend, their claims were not for abusive litigation.

1. We first address the appellees' joint motion to dismiss the appeal for lack of jurisdiction. West, Myers, Heatherington, A & E, and CSS assert that we lack jurisdiction over this appeal "because Slone and Ebron's action is a renewal of claims made in a de novo appeal to the Superior Court from the Magistrate Court" and such appeals must be brought by application for discretionary appeal, which was not done here.[3] Slone and Ebron, however, did not file the action at issue as a renewal. [4] Moreover, their initial counterclaim in the dispossessory action did not allege a RICO violation, and the superior court denied their motion to add counterclaims before dismissing the appeal in the dispossessory action. [5] Indeed, the superior court found that "[t]he RICO counterclaim and purported third party claim against unnamed parties [that Slone and Ebron seek to add] are outside the scope of the de novo appeal." Under these circumstances, we conclude that the present action is not one which required an

---

[3] See OCGA § 5-6-35 (a) (1).

[4] See OCGA § 9-2-61; *Douglas v. Kelley*, 116 Ga. App. 670 (1) (158 SE2d 441) (1967) (renewal allowed where dismissal of original action was by the court on a basis other than the merits).

[5] Compare *Bullock v. Sand*, 260 Ga. App. 874, 875 (581 SE2d 333) (2003) (application for discretionary appeal required where appeal from magistrate court was expanded in superior court to include additional matters not raised below).

application for discretionary appeal, and the appellees' motion to dismiss the appeal is denied.

Slone and Ebron ask that we impose penalties under Court of Appeals Rule 15 (b) against the appellees for filing the motion to dismiss because it was "patently frivolous." Based on the rather convoluted procedural history of this matter, we do not find that the appellees' arguments, although unsuccessful, were made unreasonably or in bad faith, and accordingly we deny Slone and Ebron's motion for penalties.[6]

2. Slone and Ebron argue that their claims in the third action are for torts other than abusive litigation, specifically a pattern of racketeering activity with predicate acts of perjury, forgery, and theft. The wrongful acts which they allege, however, all occurred during litigation of the dispossessory action. For example, they assert that: Myers, Heatherington, and West "caused A & E to continue to pursue the [dispossessory] action, knowing the evidence of unpaid rents to be forged"; the swearing out of a dispossessory warrant constituted perjury by CSS; West's appearances in court on behalf of A & E constituted perjury; and Myers committed theft by deception by making false statements during her deposition.

---

[6] See *Griffiths v. Rowe Properties*, 271 Ga. App. 344, 345 (2) (609 SE2d 690) (2005).

Georgia law defines abusive litigation as "tak[ing] an active part in the initiation, continuation, or procurement of civil proceedings against another ... [w]ith malice ... and ... [w]ithout substantial justification."[7] As we have held,

> [m]alice means acting with ill will or for a wrongful purpose and may be inferred in an action if the party initiated, continued, or procured civil proceedings or process in a harassing manner or used process for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based. Without substantial justification, when used with reference to any civil proceeding, claim, defense, motion, appeal, or other position, means that such civil proceeding, claim, defense, motion, appeal, or other position is: (A) [f]rivolous; (B) [g]roundless in fact or in law; or (C) [v]exatious.[8]

In their brief, Slone and Ebron argue that "[b]ut for Appellees' perjury, forgery, and theft, Slone and Ebron could have adequately defended themselves in the magistrate court and would have

---

[7] OCGA § 51-7-81.

[8] (Citations and punctuation omitted.) *Kendrick v. Funderburk*, 230 Ga. App. 860, 863-864 (3) (498 SE2d 147) (1998).

avoided adverse judgment there." This is the essence of an abusive litigation claim. [9] (1) Because "[t]he abusive litigation statute provides the exclusive remedy for claims of abusive litigation," we agree with the superior court that Slone and Ebron may not avoid the requirements of the statute merely by characterizing their claims arising from the allegedly abusive lawsuit as conspiracy, perjury, forgery, or theft.[10] OCGA § 51-7-84 (a) requires that the party alleging abusive litigation give written notice to those against whom the claim of abusive litigation is made before bringing suit.[11] Because it is undisputed that no such notice was given to West, Myers, Heatherington, A & E, or CSS, we affirm the superior court's dismissal of Slone and Ebron's complaint in the third action on this basis.[12]

---

[9] See id.; *Ibrahim v. Talley & Assoc.*, 214 Ga. App. 609, 611 (2) (448 SE2d 707) (1994) (abusive litigation claim based on assertion that party relied on forged document in bringing action).

[10] *Nairon v. Land*, 242 Ga. App. 259, 261 (2) (529 SE2d 390) (2000) (plaintiff could not avoid requirements of abusive litigation statute by filing claims for negligent and intentional infliction of emotional distress resulting from the lawsuit).

[11] We find no basis either in the statute itself or in case law for Slone and Ebron's assertion that OCGA § 51-7-82 (b) "specifically exempts actions for writs of possession from this notice requirement." See, e.g., *LaSonde v. Chase Mtg. Co.*, 259 Ga. App. 772, 774 (2) (577 SE2d 822) (2003) (notice of abusive litigation claim required where underlying litigation was dispossessory action).

[12] See id.

3. In this appeal, Slone and Ebron object to the superior court's award of attorney fees to West in the second action, which was their appeal from the dispossessory action. They argue that attorney fees under OCGA § 9-15-14 cannot be awarded to a nonparty, the trial court's findings of fact do not support the award, and no hearing was held to determine the value of the legal services.

OCGA § 9-15-14 (a) provides for the award of attorney fees "to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed ... a complete absence of any justiciable issue of law or fact. ..." Slone and Ebron contend that this language prohibits the award of attorney fees to a nonparty. We need not reach that issue, however, because the superior court found that West was entitled to attorney fees under both OCGA § 9-15-14 (a) and (b), and OCGA § 9-15-14 (b) contains no such restriction.[13] OCGA § 9-15-14 (b) permits the award of attorney fees if the court "finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that

[13] Compare *Allstate Ins. Co. v. Reynolds*, 210 Ga. App. 318 (436 SE2d 56) (1993) (OCGA § 9-15-14 does not authorize award of attorney fees against a nonparty).

the action, or any part thereof, was interposed for delay or harassment. ..."

However, we vacate the award of attorney fees because no hearing was held by the superior court.[14] In order for an award under OCGA § 9-15-14 (b) to be valid, "the trial court must conduct an evidentiary hearing to determine the amount of reasonable and necessary attorney[ ] fees," and the failure to do so is reversible error. [15] We therefore vacate the November 28, 2006 order in the second action and remand for a hearing on West's motion for attorney fees.[16]

4. Slone and Ebron's motion to change the style of the case on appeal is denied as moot.

---

[14] While West asserts that Slone and Ebron waived their right to a hearing by requesting that the matter be decided on the briefs, the only indication of this in the record is a letter from West's attorney. Slone and Ebron contend that they "requested appearance by telephone," but that their request was denied. Slone and Ebron objected to West's motion, [***11] and "a timely objection to the motion is sufficient to preclude a waiver." *MacDonald v. Harris*, 266 Ga. App. 287, 288 (597 SE2d 125) (2004).

[15] *Green v. McCart*, 273 Ga. 862, 863 (1) (548 SE2d 303) (2001).16 See id.; Smith v. Hardeman, 281 Ga. App. 402, 406 (2) (636 SE2d 106) (2006).

[16] See id.; *Smith v. Hardeman*, 281 Ga. App. 402, 406 (2) (636 SE2d 106) (2006).

In their third appeal, Slone and Ebron allege that the trial court erred in awarding attorney fees in the third action to West, Myers, Heatherington, A & E and CSS and in denying their motion for injunctive relief.

5. Slone and Ebron argue that the trial court erred in awarding attorney fees because the award was made to attorneys for the appellees rather than to appellees themselves, the trial court did not allow certain witnesses to testify at the hearing, and the trial court's findings did not support the award. (3) Initially, we do not find a basis for reversal in the wording of the trial court's order. Although the trial court awarded "attorney fees in the amount of $ 8,376.88 to Laura Morris for Myers, Heatherington[,] and A & E ... , $ 3,980.00 to Martin Jones, Esq. for William West, and $ 3,806.25 to William S. Dominy for CSS," this does not constitute an award to nonparties, as Slone and Ebron contend. In the very next paragraph, the trial court ordered "that Plaintiffs pay over to the Defendants the sums as stated above for attorney[s'] fees and litigation expenses." We conclude that, when read as a whole, the language of the order clearly indicates that Slone and Ebron are to pay attorney fees to Myers,

Heatherington, West, A & E, and CSS, who were all parties to the action.[17]

Slone and Ebron object to the trial court's refusal to allow testimony by certain witnesses at the hearing on attorney fees, as they believe the testimony would have demonstrated that the underlying action was substantially justified. We review a trial court's decision on the admission of evidence for abuse of discretion.[18] Here, Slone and Ebron subpoenaed Myers, Heatherington, West, William P. Schwartz, and Anne Schwartz, who they identified as "parties or representatives of parties," to testify at the hearing on attorney fees. The appellees moved to quash the subpoenas, and the trial court granted the motion, stating that it did not intend to retry the underlying case.[19] Whether the testimony Slone and Ebron sought to introduce "contained evidence that was material and relevant to the motion for attorney fees[was] within the

---

[17] See *Byers v. Caldwell*, 273 Ga. 228, 229 (539 SE2d 141) (2000)."[c]onstruction of a judgment requires consideration of the entirety of its provisions").

[18] See Munoz v. American Lawyer Media, 236 Ga. App. 462, 465 (2) (512 SE2d 347) (1999).

[19] We note that Slone and Ebron had previously taken the depositions of both Myers and Heatherington, and relied upon those depositions in seeking summary judgment in the third action. And Slone and Ebron have not indicated what testimony they expected to elicit that would have differed from the deposition testimony already available to them.

sound discretion of the trial court."[20]Under these circumstances, the trial court did not abuse its discretion in quashing the subpoenas and relying on evidence in the record to determine whether the underlying action was substantially justified.[21]

Slone and Ebron also argue that the trial court's factual findings do not support an award under either OCGA § 9-15-14 (a) or (b). The trial court awarded attorney fees under both OCGA § 9-15-14 (a) and (b). Because OCGA § 9-15-14 (a) provides for the mandatory award of attorney fees, we review such an award under the any evidence standard.[22]An award under OCGA § 9-15-14 (b), however, is discretionary, and thus the standard of review is abuse of discretion.[23]

If any evidence supports the trial court's award of attorney fees under OCGA § 9-15-14 (a), we are compelled to affirm.[24] Here, the trial court found

---

[20] Id. at 466.

[21] See id. Compare *Northen v. Mary Anne Frolick & Assoc.*, 236 Ga. App. 7, 11 (1) (510 SE2d 857) (1999) (trial court erred in excluding expert testimony at hearing on sanctions against attorney " 'for conduct which is ancillary to the merits of the case' " and thus had not been the subject of pleadings or discovery).

[22] See *La Petite Academy v. Prescott*, 234 Ga. App. 32, 34 (2) (506 SE2d 183) (1998).

[23] See id.

[24] See *Trotter v. Summerour*, 273 Ga. App. 263, 264 (1) (614 SE2d 887) (2005).

that Slone and Ebron's "RICO claim seeking money damages and equitable relief lacked substantial justification" because the allegations about the defendants' conduct were not predicate acts that would support a RICO violation and because Slone and Ebron put forth no evidence of damages. As there is evidence in the record to support these findings, the trial court's award of attorney fees under OCGA § 9-15-14 (a) is affirmed.[25] Accordingly, we need not reach the issue of whether the award was justified under OCGA § 9-15-14 (b).

6. Slone and Ebron assert that the trial court erred in denying their claim for injunctive relief against A & E. Slone and Ebron sought a temporary restraining order and interlocutory injunction against A & E to restrain it "from knowingly and willfully making or soliciting false statements on Clayton County dispossessory affidavits." The trial court denied the motion, finding that Slone and Ebron, who were not living in Clayton County and did not allege that they were subject to current or future dispossessory action there, did not have standing to pursue the relief they sought. We agree.

We review the trial court's ruling on injunctive relief for abuse of discretion.[26] The purpose of a

---

[25] See *EarthResources v. Morgan County*, 281 Ga. 396, 401 (5) (638 SE2d 325) (2006).

[26] See *Bernocchi v. Forcucci*, 279 Ga. 460, 461 (1) (614 SE2d 775) (2005).

temporary restraining order or interlocutory injunction is to preserve the status quo while a case is pending.[27] In order to have standing to seek such relief, a party must have a legally protected interest that will be affected by the action sought to be enjoined.[28] It is undisputed that Slone and Ebron have vacated the leased premises, no longer live in Clayton County, and do not argue that they are or will be subject to a dispossessory affidavit filed by A & E. (4) We therefore agree that they have no standing to seek and obtain injunctive relief from an action that does not harm them.[29] And we find no legal or factual support for their argument that their underlying cause of action, which had already been dismissed when they sought injunctive relief, somehow suffers a continuing injury "as a result of A & E's dispossessory practices." The trial court did not

---

[27] See *Byelick v. Michel Herbelin USA, Inc.*, 275 Ga. 505, 506 (1) (570 SE2d 307) (2002); *Stewart v. Brown*, 253 Ga. 480, 481 (321 SE2d 738) (1984).

[28] See *Ga. Power Corp. v. Allied Chem. Corp.*, 233 Ga. 558, 560-561 (1) (212 SE2d 628) (1975); see generally *AT&T Wireless PCS v. Leafmore Forest &c.*, 235 Ga. App. 319, 320 (1) (509 SE2d 374) (1998); *Clark's Valdosta, Inc. v. City of Valdosta*, 224 Ga. 331 (161 SE2d 867) (1968); *First Nat. Bank &c. v. Harmon*, 186 Ga. 847 (2) (199 SE 223) (1938).

[29] See Perdue v. Lake, 282 Ga. 348 (647 SE2d 6) (2007); see, e.g., Sneakers of Cobb County v. Cobb County, 265 Ga. 410, 411 (2) (455 SE2d 834) (1995).

abuse its discretion in denying injunctive relief to Slone and Ebron.[30]

Judgment affirmed in part and vacated in part. Blackburn, P. J., and Bernes, J., concur.

---

[30] See *Lewis v. City of Atlanta*, 274 Ga. 296 (553 SE2d 611) (2001).

Court of Appeals
of the State of Georgia

Atlanta, October 24, 2007

The Court of Appeals passed the following order

Case No. A07A1089

DEBRA SLONE et al. v. BONNIE MYERS et al.

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 24, 2007

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk,

s/ William L. Martin. III

Court of Appeals
of the State of Georgia

Atlanta, October 24, 2007

The Court of Appeals passed the following order

Case No. A07A1406

DEBRA SLONE et al. v. WILLIAM D. WEST

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 24, 2007

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk,

s/ William L. Martin. III

Court of Appeals
of the State of Georgia

Atlanta, October 24, 2007

The Court of Appeals passed the following order

Case No. A07A2274

DEBRA SLONE et al. v. BONNIE MYERS et al.

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 24, 2007

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk,

s/ William L. Martin. III

Court of Appeals
of the State of Georgia

ATLANTA, October 24, 2007

The Court of Appeals passes the following order:

A07A1089. SLONE ET AL .v. MYERS, ET AL.
A07A1406. SLONE ET AL. v. WEST.
A07A2274. SLONE ET AL. v. MYERS, ET AL.

Upon consideration of Appellants Slone and Ebron's motion to revise the opinion in the above-captioned cases pursuant to Rule 37(f), the same is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta October 24, 2007

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ William L. Martin. III, *Clerk*

APPENDIX B
Trial Court Decisions on Motions to Dismiss

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

DEBRA SLONE and SONJA EBRON, **Plaintiffs,** **vs** **BONNIE MYERS, PATRICIA HEATHERINGTON, A & E REAL ESTATE SALES & MANAGEMENT, INC., CSS SERVICES, INC., and WILLIAM W. WEST,** **Defendants.**	**Civil Action** **No. 2006-CV-4199-8**

ORDER GRANTING DEFENDANT WEST'S MOTION TO DISMISS

Currently pending before the Court is Defendant William W. West's motion to dismiss which came on regularly for a hearing on November 27, 2006, and after considering the motion, Plaintiffs' response thereto, and the entire record in this action;

THE COURT FINDS THAT Slone and Ebron's claims against West are in the nature of abusive litigation, and Slone and Ebron failed to comply wit the notice requirements of O.C.G.A. § 51-7-84(a), which notice is a condition precedent to maintaining this action; and

NOW THEREFORE IT IS ORDERED AND ADJUDGED THAT Defendant West's motion be and hereby is GRANTED and Plaintiffs' action against West is dismissed and West is dropped as a party defendant in this action. Because there are multiple parties and claims in this action, the Court finds there is no just reason for delay and directs entry of final judgment in favor of Defendant West under O.C.G.A. § 9-11-54(b).

SO ORDERED this 27 day of November, 2006.

s/ MATTHEW O. SIMMONS, JUDGE
CLAYTON SUPERIOR COURT

Prepared and Submitted by
s/MARTIN C. JONES
Attorney for William W. West
Georgia Bar No. 402521
100 Corporate Center Drive Suite A
Stockbridge, Georgia 30281
(678) 565-8970

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

DEBRA SLONE and SONJA EBRON,	
Plaintiffs,	
vs	**Civil Action**
BONNIE MYERS, PATRICIA HEATHERINGTON, A & E REAL ESTATE SALES & MANAGEMENT, INC., CSS SERVICES, INC., and WILLIAM W. WEST,	**No. 2006-CV-4199-8**
Defendants.	

ORDER GRANTING MOTION TO DISMISS AS TO DEFENDANTS, BONNIE MYERS, PATRICIA HEATHERINGTON, A&E REAL ESTATE SALES AND MANAGEMENT, INC., and CSS SERVICES, INC.

Defendant William W. West's motion to dismiss came on regularly for a hearing on November 27, 2006. Defendant's Bonnie Myers, Patricia Heatherington, A&E Real Estate Sales and Management, Inc., and CSS Services, Inc. appeared herein through their undersigned counsel of record,

and incorporated and adopted Defendant West's motion and oral arguments as applying to them.

After considering the motion, Plaintiff's response thereto, and the entire record in this action;

THE COURT FINDS THAT Slone and Ebron's claims against West are in the nature of abusive litigation, and Slone and Ebron failed to comply with the notice requirements of O.C.G.A. § 51-7-84(a), which notice is a condition precedent to maintaining this action; and

NOW THEREFORE IT IS ORDERED AND ADJUDGED THAT the motion to dismiss hereby is GRANTED and Plaintiffss action against Bonnie Myers, Patricia Heatherington, A&E Real Estate Sales and Management, Inc., and CSS Services, Inc. is DISMISSED and Bonnie Myers, Patricia Heatherington, A&E Real Estate Sales and Management, Inc., and CSS Services, Inc. are dropped as party defendants in this action. Because there are multiple parties and claims in this action, the Court finds there is no just reason for delay and directs entry of final judgment in favor of Defendants Bonnie Myers, Patricia Heatherington, A&E Real Estate Sales and Management, Inc., and CSS Services, Inc. under O.C.G.A. § 9-11-54(b).

SO ORDERED this 5th day of December, 2006.

(Filed: Dec. 6, 2006)

s/ MATTHEW O. SIMMONS, JUDGE
CLAYTON SUPERIOR COURT

Prepared and Submitted by

s/William S. Dominy (s/ Laura Morris, with express permission)
Georgia Bar No. 225350

Suite 250
315 W. Ponce de Leon Avenue
Decatur, Georgia 30030
(678) 904-2580

Attorneys for Defendant CSS Services, Inc.

s/Laura S. Morris
Georgia Bar No. 638603

WEISSMAN, NOWACK, CURRY & WILCO, P.C.
One Alliance Center
3500 Lenox Road, 4th Floor
Atlanta, Geogia 30326
(404) 926-4500

Attorneys for Defendants Bonnie Myers, Patricia Heatherington, and A&E Real Estate Sales and Management, Inc.

APPENDIX C
Trial Court Decision on Attorney Fees to West

**IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA**

A & E REAL ESTATE SALES & MANAGEMENT, INC., **Plaintiff,** **vs** **DEBRA SLONE and SONJA EBRON,** **Defendants.**	**Civil Action** **No. 2005CV4283-8**

ORDER GRANTING DEFENDANT MOTION FOR ATTORNEYS' FEES

Currently pending before the Court is William W. West's motion for attorneys' fees under O.C.G.A. §9-15-14 which is being ruled upon without a hearing, at the request of Defendants Slone and Ebron. After consideration of the motion, the Defendants' response, the argument of counsel and citation of authorities, and the entire record in this action;

THE COURT HOLDS THAT there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed

that a court would accept Slone and Ebron's RICO counterclaim against West. Slone and Ebron allege the purported RICO predicate acts committed by West are his alleged perjury by making entries of appearance in cases to represent a client which had previously filed a dispossessory affidavit containing a false statement. West cannot be found to have committed perjury because West did not make a false statement. Further West cannot be found to have suborned perjury because the false statement, if any, was made prior to West's entry of appearance as counsel for A&E Real Estate Sales & Management and there is no evidence that West procured or induced perjury by A&E. Thus an award of attorneys' fees under O.C.G.A §9-15-14(a) is mandatory.

THE COURT FURTHER HOLDS THAT Slone and Ebron's RICO action against West was substantially groundless and was interposed for harassment and delay and an award of attorneys fees under §9-15-14(b) is also appropriate. Slone and Ebron's RICO claim against West lacked substantial justification. Slone and Ebron's intent to harass West is evidenced by pursuing the RICO claim against West notwithstanding the fact that Slone and Ebron suffered no damages; Slone and Ebron having voluntarily surrendered the premises rather than been evicted; Slone and Ebron praying that West be professionally disciplined in this action, up to and including revocation of his professional license; Slone and Ebron attempting to join West in this action

without leave of court, forcing West to file a motion to dismiss and be dropped as a party; and Slone and Ebron moving to join West in this action when there is no recognized procedure for joining an alleged tortfeasor as a party defendant to a counterclaim. Thus an award of attorney's fees under §9-15-14(b) is permissible.

THE COURT FINDS THAT William W. West incurred attorney's fees in the amount of Four Thousand Two Hundred Dollars ($4, 200.00) which was reasonable and necessary in prevailing on Slone and Ebron's RICO claim.

NOW THEREFORE IT IS ORDERED AND ADJUDGED that William W. West do have and recover the sum of Four Thousand Two Hundred Dollars ($4, 200.00) from Defendants Slone and Ebron.

SO ORDERED, this 28th day of November, 2006

s/ MATTHEW O. SIMMONS, JUDGE
CLAYTON SUPERIOR COURT

Prepared and Submitted by
s/MARTIN C. JONES
Attorney for William W. West
Georgia Bar No. 402521
100 Corporate Center Drive Suite A
Stockbridge, Georgia 30281
(678) 565-8970

APPENDIX D
Trial Court Decision on Attorney Fees to Respondents

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

DEBRA SLONE and SONJA EBRON, **Plaintiffs,** **vs** **BONNIE MYERS, PATRICIA HEATHERINGTON, A & E REAL ESTATE SALES & MANAGEMENT, INC., CSS SERVICES, INC., and WILLIAM W. WEST,** **Defendants.**	**Civil Action** **No. 2006-CV-4199-8**

ORDER

The above-styled matter is before this Court on all Defendants' Motion for Attorney's Fees under O.C.G.A §9-15-14(a) and (b), and Defendants' Motion to Quash Plaintiff's Witness Subpoenas.

The Court finds that subpoenas directed toward the individuals who are not attorneys of

record in this case are for purposes outside the scope of the hearing on attorney's fees. Therefore, Defendants' Motion to Quash Witness Subpoenas are hereby GRANTED.

The original action (2005 CV-4825-8) was a dispossessory proceeding whereby the magistrate court found hat Plaintiffs had not paid their rent for the premises they occupied; however, Slone and Ebron voluntarily surrendered the leased premises rather than be evicted. The original action was appealed to this Court and dismissed by this Court on September 12, 2006. Plaintiffs did not appeal, but instead filed this action asserting violations of the Racketeering Influenced and Corrupt Act. This Court dismissed these claims on December 05, 2006.

The Court finds that Plaintiffs' assertion of a RICO claim seeking money damages and equitable relief lacked substantial justification under O.C.G.A §9-15-14(a). Plaintiffs' allegations as to any Defendants' conduct does not constitute a predicate act so as to support a RICO violation. Further, Plaintiffs have not put forth any evidence to support their alleged damages and they voluntarily surrendered the leased premises.

The Court further finds that Plaintiffs' assertions were interposed for harassment and unnecessarily expanded the proceedings under O.C.G.A §9-15-14(b), where the underlying issue was a dispossessory proceeding and the attorney handling the dispossessory, among others, were

hailed into court unnecessarily. The Court further finds that this action was an attempt to re-litigate issues that had been decided adversely to Plaintiffs in 2005 CV-4825-8.

Plaintiffs' complaint alleged numerous allegations of RICO violations, theft by deception and forgery in the first degree. Plaintiffs further sought in the course of this action to revoke A & E's corporate charter, have Myers' brokers license removed, moved to disqualify Laura Morris as attorney of record for A & E and moved to have West disbarred, among other things.

The Court further finds that the evidence presented supports an award of attorney's fees in the amount of $8,376.88 to Laura Morris for Myers, Heatherington and A & E Real Estate Sales and Management, Inc., $3,980.00 to Martin Jones, Esq. for William West, and $3,806.25 to William S. Dominy for CSS Services, Inc.

IT IS HEREBY ORDERED that Plaintiffs pay over to the Defendants the sums as stated above for attorney's fees and litigation expenses in the above-captioned action.

This 21st day of March, 2007.

s/ MATTHEW O. SIMMONS, JUDGE

MATTHEW O. SIMMONS

Chief Judge, Superior Court
Clayton Judicial Circuit

APPENDIX E
Trial Court Decision on Injunctive Relief

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

DEBRA SLONE and SONJA EBRON, Plaintiffs, **vs** **BONNIE MYERS, PATRICIA HEATHERINGTON, A & E REAL ESTATE SALES & MANAGEMENT, INC., CSS SERVICES, INC., and WILLIAM W. WEST,** Defendants.	**Civil Action** **No. 2006-CV-4199-8**

ORDER

The above-styled matter is before this Court on Plaintiffs' Application for Temporary Restraining Order and Motion for Interlocutory Injunction. Plaintiffs seek to enjoin certain actions of A & E relating to obtaining dispossessory affidavits.

Having reviewed and considered the motion, the Court finds that Slone and Ebron currently

reside in St. Petersburg, Florida. Plaintiffs have not alleged that either of them is subject to a current or future dispossessory action in Clayton County, Georgia.

In order to have standing to institute a claim, a party must have a legally protected interest that will be affected by the outcome of the suit. Georgia Power Co. v. Allied Chemical Corp., 233 Ga. 558, 212 S.E. 2d 628 (1975).

Plaintiffs do not have standing to seek to restrain A & E from its actions in pursuing dispossessory affidavits. Plaintiffs' application for a temporary restraining order and motion for interlocutory injunction is hereby DENIED.

SO ODERED this 10th day of May, 2007.

s/ MATTHEW O. SIMMONS, JUDGE

MATTHEW O. SIMMONS

Chief Judge, Superior Court
Clayton Judicial Circuit

APPENDIX F
Georgia Supreme Court Opinions

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE ATLANTA

Date: February 25, 2008

Debra Sloan
4601 2nd Avenue North
Saint Petersburg, FL 33713

Case No. S08C0413

DEBRA SLONE et al. v. BONNIE MYERS et al.

COURT OF APPEALS CASE NO.
A07A1089 A07A1406 A07A2274

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Case No. S08C0413 Atlanta, March 31, 2008

The honorable Supreme Court met pursuant to adjournment. The following order was passed:

DEBRA SLONE et al. v. BONNIE MYERS et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Therese S. Barnes, Clerk

APPENDIX G
Georgia's Abusive Litigation and Attorney's Fees Statutes

Georgia's Abusive Litigation Statutes

OCGA § 51-7-80 (Title 51, Chapter 7, Section 80)

As used in this article, the term:

(1) "Civil proceeding" includes any action, suit, proceeding, counterclaim, cross-claim, third-party claim, or other claim at law or in equity.

(2) "Claim" includes any allegation or contention of fact or law asserted in support of or in opposition to any civil proceeding, defense, motion, or appeal.

(3) "Defense" includes any denial of allegations made by another party in any pleading, motion, or other paper submitted to the court for the purpose of seeking affirmative or negative relief, and any affirmative defense or matter asserted in confession or avoidance.

(4) "Good faith," when used with reference to any civil proceeding, claim, defense, motion, appeal, or other position, means that to the best of a person's or his or her attorney's knowledge, information, and belief, formed honestly after reasonable inquiry, that such civil proceeding, claim, defense, motion, appeal, or other position is well grounded in fact and is either warranted by existing law or by reasonable grounds to believe that an argument for the extension, modification, or reversal of existing law may be successful.

(5) "Malice" means acting with ill will or for a wrongful purpose and may be inferred in an

action if the party initiated, continued, or procured civil proceedings or process in a harassing manner or used process for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based.

(6) "Person" means an individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or unincorporated association of persons with capacity to sue or be sued.

(7) "Without substantial justification," when used with reference to any civil proceeding, claim, defense, motion, appeal, or other position, means that such civil proceeding, claim, defense, motion, appeal, or other position is:
   (A) Frivolous;
   (B) Groundless in fact or in law; or
   (C) Vexatious.

(8) "Wrongful purpose" when used with reference to any civil proceeding, claim, defense, motion, appeal, or other position results in or has the effect of:
   (A) Attempting to unjustifiably harass or intimidate another party or witness to the proceeding; or
   (B) Attempting to unjustifiably accomplish some ulterior or collateral purpose other than resolving the subject controversy on its merits.

OCGA § 51-7-81 (Title 51, Chapter 7, Section 81)
Any person who takes an active part in the initiation, continuation, or procurement of civil proceedings against another shall be liable for abusive litigation if such person acts:
(1) With malice; and
(2) Without substantial justification.

OCGA § 51-7-82 (Title 51, Chapter 7, Section 82)
(a) It shall be a complete defense to any claim for abusive litigation that the person against whom a claim of abusive litigation is asserted has voluntarily withdrawn, abandoned, discontinued, or dismissed the civil proceeding, claim, defense, motion, appeal, civil process, or other position which the injured person claims constitutes abusive litigation within 30 days after the mailing of the notice required by subsection (a) of Code Section 51-7-84 or prior to a ruling by the court relative to the civil proceeding, claim, defense, motion, appeal, civil process, or other position, whichever shall first occur; provided, however, that this defense shall not apply where the alleged act of abusive litigation involves the seizure or interference with the use of the injured person's property by process of attachment, execution, garnishment, writ of possession, lis pendens, injunction, restraining order, or similar process which results in special damage to the injured person.
(b) It shall be a complete defense to any claim for abusive litigation that the person against whom a claim of abusive litigation is asserted acted in good faith; provided, however, that good faith shall be an affirmative defense and the burden of

proof shall be on the person asserting the actions were taken in good faith.

(c) It shall be a complete defense to any claim for abusive litigation that the person against whom a claim of abusive litigation is asserted was substantially successful on the issue forming the basis for the claim of abusive litigation in the underlying civil proceeding.

OCGA § 51-7-83 (Title 51, Chapter 7, Section 83)

(a) A plaintiff who prevails in an action under this article shall be entitled to all damages allowed by law as proven by the evidence, including costs and expenses of litigation and reasonable attorney's fees.

(b) If the abusive litigation is in a civil proceeding of a court of record and no damages other than costs and expenses of litigation and reasonable attorney's fees are claimed, the procedures provided in Code Section 9-15-14 shall be utilized instead.

(c) No motion filed under Code Section 9-15-14 shall preclude the filing of an action under this article for damages other than costs and expenses of litigation and reasonable attorney's fees. Any ruling under Code Section 9-15-14 is conclusive as to the issues resolved therein.

OCGA § 51-7-84 (Title 51, Chapter 7, Section 84)

(a) As a condition precedent to any claim for abusive litigation, the person injured by such act shall give written notice by registered or certified mail or statutory overnight delivery or some other means evidencing receipt by the addressee to any person against whom such injured person intends to assert a claim for abusive litigation and shall thereby give the person against whom an abusive litigation claim is contemplated an opportunity to voluntarily withdraw, abandon, discontinue, or dismiss the civil proceeding, claim, defense, motion, appeal, civil process, or other position. Such notice shall identify the civil proceeding, claim, defense, motion, appeal, civil process, or other position which the injured person claims constitutes abusive litigation.

(b) An action or claim under this article requires the final termination of the proceeding in which the alleged abusive litigation occurred and must be brought within one year of the date of final termination.

OCGA § 51-7-85 (Title 51, Chapter 7, Section 85)

On and after April 3, 1989, no claim other than as provided in this article or in Code Section 9-15-14 shall be allowed, whether statutory or common law, for the torts of malicious use of civil proceedings, malicious abuse of civil process, nor abusive litigation, provided that claims filed prior to such date shall not be affected. This article is the exclusive remedy for abusive litigation.

Georgia's Attorney Fees Statutes

OCGA § 9-15-14 (Title 9, Chapter 15, Section 14)

(a) In any civil action in any court of record of this state, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position. Attorney's fees and expenses so awarded shall be assessed against the party asserting such claim, defense, or other position, or against that party's attorney, or against both in such manner as is just.

(b) The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the "Georgia Civil Practice Act." As used in this Code section, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(c) No attorney or party shall be assessed attorney's fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish a new theory of law in Georgia if such new theory of law is based on some recognized precedential or persuasive authority.

(d) Attorney's fees and expenses of litigation awarded under this Code section shall not exceed amounts which are reasonable and necessary for defending or asserting the rights of a party. Attorney's fees and expenses of litigation incurred in obtaining an order of court pursuant to this Code section may also be assessed by the court and included in its order.

(e) Attorney's fees and expenses under this Code section may be requested by motion at any time during the course of the action but not later than 45 days after the final disposition of the action.

(f) An award of reasonable and necessary attorney's fees or expenses of litigation under this Code section shall be determined by the court without a jury and shall be made by an order of court which shall constitute and be enforceable as a money judgment.

(g) Attorney's fees and expenses of litigation awarded under this Code section in a prior action between the same parties shall be treated as court costs with regard to the filing of any subsequent action.

(h) This Code section shall not apply to proceedings in magistrate courts. However, when a case is appealed from the magistrate court, the appellee may seek litigation expenses incurred below if the appeal lacks substantial justification.

APPENDIX H
Petitioners' Complaint for Damages

SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

DEBRA SLONE and SONJA EBRON, Plaintiffs, **vs** **BONNIE MYERS, PATRICIA HEATHERINGTON, A & E REAL ESTATE SALES & MANAGEMENT, INC., CSS SERVICES, INC., and WILLIAM W. WEST,** Defendants.	**Civil Action** **No. 2006-4199-8**

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Preliminary Statement

COME NOW Plaintiffs Debra Slone and Sonja Ebron and show this Court the following:

1. Plaintiffs Debra Slone and Sonja Ebron are the victims of a conspiracy to bolster the fortunes of a property management company that unjustly enriches itself by illegally dispossessing tenants

in the interests of absent property owners. A&E Real Estate Sales and Management, Inc. (hereinafter "A&E"), CsS Services, Inc. (hereinafter "CsS"), and William W. West are liable to Slone and Ebron for violations of the Georgia Racketeering Influenced and Corrupt Organizations ("RICO") Act. A&E's president, Bonnie Myers, is liable to Slone and Ebron for first-degree forgery and theft by deception. A&E's secretary and treasurer, Patricia Heatherington, is liable to Slone and Ebron for first-degree forgery and theft by deception. William W. West is liable to Slone and Ebron for first-degree forgery and theft by deception.

2. A&E, CsS, and William W. West are engaged in an ongoing criminal conspiracy and must be temporarily and permanently enjoined from committing acts of perjury and subornation of perjury in dispossessory proceedings. Bonnie Myers, Patricia Heatherington, A&E, CsS, and William W. West have caused Slone and Ebron to incur special and general damages to be determined at trial. Bonnie Myers, Patricia Heatherington, A&E, CsS, and William W. West have caused Slone and Ebron to incur certain expenses of litigation to be determined at trial. Bonnie Myers, Patricia Heatherington, A&E, CsS, and William W. West are therefore liable to Slone and Ebron for compensatory and punitive damages.

Jurisdiction

3. At all relevant times, Slone and Ebron were residents of Clayton County, Georgia.
4. At all relevant times, Bonnie Myers, Patricia Heatherington, A&E, CsS and William W. West had a nexus of operations in Clayton County, Georgia.
5. This Court has subject matter jurisdiction.
6. Venue is proper in this judicial district.

Parties

7. Slone and Ebron are past Clayton County tenants who were injured by a dispossessory action [A&E Real Estate Sales & Management, Inc. v. Debra Slone and Sonja Ebron; Civil Action File No. 2005 CV 04283] listing A&E as plaintiff, where A&E was not the property owner, the real party in interest.
8. Bonnie Myers is founder and president of A&E.
9. Bonnie Myers is a real estate broker licensed by the Georgia Real Estate Commission.
10. Patricia Heatherington is founder, secretary and treasurer of A&E.
11. Patricia Heatherington is the A&E employee most directly responsible for the dispossession of tenants in properties managed by A&E.
12. A&E is a Georgia corporation that serves owners of property located throughout metro Atlanta.

13. A&E is a property management firm that holds a license founded upon the Georgia real-estate broker's license of his president, Bonnie Myers.
14. A&E's services include real estate sales, maintenance of rental properties, collection of rents, tenant evictions and general property management.
15. CsS is a Georgia corporation that bills himself as the leading dispossessory and eviction service in the metro Atlanta area, serving Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Hall, Henry, Paulding, and Rockdale counties.
16. CsS processes tenant credit applications; performs credit and background checks on tenants and property-management employees; searches public records for criminal backgrounds and judgments; obtains dispossessory warrants; handles physical evictions; collects on tenant "skips," past-due balances, and judgments; and coordinates legal issues with attorneys, some of whom are referred to clients by CsS.
17. A&E has retained CsS for many years and customarily sends him to file a dispossessory affidavit when a tenant in an A&E-managed property is to be evicted.
18. William W. West is a member of the State Bar of Georgia.

19. William W. West has held municipal and county-level judicial appointments in the metro Atlanta area.
20. William W. West's services include estate, trust, civil litigation and criminal defense.
21. A&E has retained William W. West for many years and customarily sends him to prosecute a dispossessory action (outside the borders of his magistracy) when the tenant answers.

Factual Allegations Common to All Counts

22. At all relevant times, Slone and Ebron were tenants of real property located at 8495 North Pond Drive in Riverdale, Clayton County, Georgia.
23. At all relevant times, the property located at 8495 North Pond Drive in Riverdale, Clayton County, Georgia was owned by Connie J. Wright of Stafford, Virginia.
24. Connie J. Wright leased the subject property to Slone and Ebron in October 2001 at a rate of $900 per month, said lease expiring after one year but continuing on a month-to-month basis.
25. On May 26, 2005, A&E entered into a contract with Connie J. Wright to manage the subject property.
26. A&E notified Slone and Ebron on May 27, 2005 that the property owner had retained him to manage the property.

27. At A&E's request, Slone and Ebron subsequently tendered monthly rents for June, July, August and September to A&E instead of to the property owner.
28. On or about July 6, 2005, A&E received from the property owner instructions to evict Slone and Ebron, along with two rent checks executed by Slone and Ebron, one that had been returned for insufficient funds and another estopped from payment, both denoting "May rent."
29. Bonnie Myers, Patricia Heatherington and William W. West subsequently became aware that the property owner had materially altered one of the rent checks by replacing a notation for "May rent" with "rent April".
30. On or about August 15, 2005, A&E solicited CsS to initiate dispossessory proceedings in the right of A&E against Slone and Ebron on the grounds that rents for April 2005 and May 2005 were due and unpaid.
31. In so doing, A&E committed an act of subornation of perjury, and Bonnie Myers and Patricia Heatherington committed acts of forgery in the first degree and theft by deception.
32. On August 16, 2005, CsS swore out a dispossessory warrant in the right of A&E against Slone and Ebron.
33. In so doing, CsS committed an act of perjury.
34. On August 23, 2005, a dispossessory warrant was served upon Slone and Ebron by tack and

mail service upon the front door of their residence.

35. Slone and Ebron answered the summons on August 30, 2005, denying A&E's claims and alleging counterclaims.
36. William W. West appeared on behalf of A&E on September 6, 2005.
37. In so doing, he committed an act of perjury and otherwise violated the Georgia Rules of Professional Conduct.
38. On September 12, 2005, as a proximate cause of the illegal actions of A&E, CsS and William W. West, the Clayton County Magistrate Court entered judgment for A&E and against Slone and Ebron for possession, $3270 in past due rents, and costs of court.
39. On September 19, 2005, Slone and Ebron paid $3270 into the Clayton County Magistrate Court's registry as ordered, thereby incurring a loss of use of those monies for more than one year. Slone and Ebron also paid $92 in court costs to the Clayton County Magistrate Court and $80 to the Clayton County Superior Court for the right of appeal. (Upon *de novo* review by the Clayton County Superior Court, A&E's action against Slone and Ebron was dismissed for failure to join the property owner, an indispensable party [A&E Real Estate Sales and Management, Inc. v. Debra Slone and Sonja Ebron; Civil Action No. 2005 CV 04283].)

40. Because the magistrate court reported its judgment as unpaid instead of appealed, Slone and Ebron subsequently incurred general damages related to relocation.
41. Following Slone's and Ebron's appeal of the magistrate court's judgment to the Clayton County Superior Court on September 19, 2005, but prior to its ultimate dismissal, Bonnie Myers, Patricia Heatherington and William W. West caused A&E to continue to pursue the action, knowing the evidence of unpaid rents to be forged.
42. In so doing, Bonnie Myers, Patricia Heatherington and William W. West committed acts of theft by deception.
43. During her deposition on March 21, 2006, Bonnie Myers refused to acknowledge the property owner's alteration of the rent check and falsely claimed no knowledge of it.
44. In so doing, Bonnie Myers committed an act of theft by deception.
45. During oral argument for summary judgment on April 24, 2006, William W. West again introduced the altered rent check into evidence.
46. In so doing, William W. West committed acts of forgery in the first degree and theft by deception.
47. The above-described acts are typical of Defendants' conspiracy to violate the rights of Clayton County tenants for pecuniary gain. A&E is the primary beneficiary and director of this

dispossessory scheme. To attract business, A&E maintains a practice of evicting or threatening to evict tenants in his own right rather than in the right of the property owner. This practice is especially attractive to owners of metro Atlanta properties who themselves reside outside the metro Atlanta area, as well as to those who want to distance themselves from tenant-related litigation. By filing dispossessory warrants in his own right instead of in the right of his clients, A&E shields his clients from the potential repercussions of such actions. The company's willingness to commit perjury and other crimes to so shield his clients, and the unwillingness of his competitors to do likewise, allows A&E to maintain a competitive advantage in his marketplace.

48. In the last 15 years, A&E has initiated nearly 400 dispossessory actions against Clayton County tenants in his own right instead of in the right of his clients, a rate exceeding twice per month. In at least one case [A&E Real Estate Sales and Management, Inc. v. Mary Lasonde; Civil Action No. 1997 CV 02326], the real party in interest was found to be the property owner, not A&E. Yet A&E, with malice aforethought, has continued to routinely file such groundless dispossessory actions for nearly a decade hence, using CsS and William W. West as his agents. From the fees earned in performing their roles in

the conspiracy, these agents have derived financial benefit sufficient to ensure the alignment of their goals with A&E's.

49. Regular and frequent acts of perjury and associated violations of the Georgia RICO Act are necessary to the success of A&E's dispossessory scheme. To initiate a dispossessory action in Clayton County in his own right, A&E, through his agent CsS, must state falsely under oath that he owns the subject property — thus falsifying a material fact. Exhibit A – Clayton County PATHO Warrant. In such actions, tenants are effectively barred from asserting affirmative defenses or counterclaims related to the property owner, since the owner is not a party to the action. Property owners need not concern themselves, as well, with the return of security deposits or the sanction of O.C.G.A. §44-7-35 (which holds a landlord liable for triple damages when security deposits are unlawfully withheld) after successful conclusion of such actions. Furthermore, tenants are barred in such proceedings from challenging A&E's standing. The tenant may not dispute his landlord's title or attorn to another claimant while he is in actual physical occupation, while he is performing any active or passive act or taking any position whereby he expressly or impliedly recognizes his landlord's title, or while he is taking any position that is inconsistent with the position that the

landlord's title is defective. O.C.G.A. §44-7-9. As a result of Defendants' actions, tenants are routinely denied due process unless and until they post the supersedeas bond necessary to stay and appeal the almost inevitable adverse judgment of the magistrate court.

50. In granting certiorari in Williams v. Shaffer, 385 U.S. 1037 (1967), Justice Brennan bemoaned the apparent disregard for the due-process rights of poor tenants inherent to Georgia's landlord-tenant law. To evict a tenant in that bygone era, a Georgia sheriff obtained a dispossessory warrant upon the landlord's affidavit. Absent the tenant's tender of a bond valued at several months' double rent, he was summarily evicted in four days. His ability to obtain a hearing was thus dependent on his wealth, in violation of his rights to equal protection. In like manner, the acts of perjury, subornation of perjury and other crimes by Bonnie Myers, Patricia Heatherington, A&E, CsS, and William W. West work to violate the civil rights of Clayton County tenants. The criminal conspiracy organized and maintained by Defendants as a business practice takes Georgia backward 40 years.

Count I - Georgia Civil RICO Violations
(as to A&E, CsS and William W. West)

51. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 50 as if the same were set forth herein in full.
52. A&E, CsS, and William W. West are jointly and severally liable to Slone and Ebron for violations of the Georgia RICO Act through their conduct of an enterprise comprising A&E, those of his clients with interests in metro Atlanta rental properties, CsS, William W. West and the magistrate courts of metro Atlanta. O.C.G.A. §16-14-6(5)(c) creates a private cause of action for persons and entities injured by violations of O.C.G.A. §16-14-1 *et seq.*, the Georgia RICO Act.
53. Acts of perjury and subornation of perjury pursuant to O.C.G.A. §16-14-3(9)(a)(xv) constitute the required predicate acts.
54. As to A&E, a person commits the offense of subornation of perjury when he procures or induces another to commit the offense of perjury. O.C.G.A. §16-10-72.
55. As to CsS, a person who *makes* or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any agency of the government of any county of this state, commits perjury. O.C.G.A. §16-10-20.
56. As to William W. West, a person who makes or *uses* any false writing or document, knowing the

same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any agency of the government of any county of this state, commits perjury. O.C.G.A. §16-10-20. Further, to be guilty as a party to a crime (herein, to commit subornation of CsS' perjury and his own) as an aider or abettor pursuant to O.C.G.A. §16-2-20(b)(3), a person must be an accessory before the fact. Purvis v. The State, 208 Ga. App. 653, 433 SE2d 58 (1993).

57. Elements of RICO liability are (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985). Participation in the dispossessory scheme by A&E, CsS and William W. West constitutes the *conduct* of a RICO enterprise, as required by O.C.G.A. §16-14-4. The association-in-fact of A&E, the clients whose metro Atlanta properties he manages, CsS, William W. West and the magistrate courts of metro Atlanta constitutes the RICO *enterprise*, as required by O.C.G.A. §16-14-4. The frequent filing and prosecution of dispossessory actions by A&E, CsS and William W. West constitutes a *pattern* of racketeering activity, as required by O.C.G.A. §16-14-3(2). The acts of perjury as detailed above (and, in fact, each individual act of perjury in a dispossessory action initiated by

A&E) constitute *racketeering activity* as that term is defined in O.C.G.A. §16-14-3(3).

58. A 1996 eviction case [A&E Real Estate Sales and Management, Inc., v. Melissa and Jack Ushery; Civil Action File No. 1996 CV 04785] corroborates the *modus operandi* of A&E, CsS and William W. West.
59. On or about July 14, 1996, A&E solicited CsS to initiate dispossessory proceedings in the right of A&E against Melisa and Jack Ushery.
60. In so doing, A&E committed an act of subornation of perjury.
61. On July 15, 1996, CsS swore out a dispossessory warrant in the right of A&E against Melisa and Jack Ushery.
62. In so doing, CsS committed an act of perjury.
63. On July 18, 1996, a dispossessory warrant was served upon Melisa and Jack Ushery by tack and mail service upon the front door of their Clayton County residence.
64. Jack Ushery answered the summons on July 24, 1996.
65. William W. West appeared on behalf of A&E on August 7, 1996.
66. In so doing, William W. West committed an act of perjury. He also violated Rules 1.2 (Scope of Representation) and 3.3 (Candor Toward the Tribunal) of the Georgia Rules of Professional Conduct.

67. On August 12, 1996, the Clayton County Magistrate Court entered judgment for A&E and against Melisa and Jack Ushery for possession, $1717 in past due rents, and costs of court.
68. On September 10, 1996, A&E (via William W. West) demanded a supersedeas bond as a condition of the Usherys retaining possession of the subject property, and the court so ordered on October 3, 1996.
69. On October 18, 1996, the Usherys paid $1717 into the Clayton County State Court registry as ordered, thereby incurring a loss of those monies.
70. On November 4, 1996, A&E (via William W. West) collected the monies entered by the Usherys into the court's registry.
71. A writ of possession was entered against the Usherys on November 18, 1996.
72. In violation of O.C.G.A. §16-14-4(a), A&E, CsS and William W. West have, through the pattern of racketeering activity described above and through the proceeds derived therefrom, acquired and/or maintained, directly or indirectly, an interest in and/or control of an enterprise, real property, and/or personal property (including but not limited to money).
73. In violation of O.C.G.A. §16-14-4(b), A&E, CsS and William W. West have, through a pattern of racketeering activity, conducted and participated in, directly or indirectly, an enterprise.

74. In violation of O.C.G.A. §16-14-4(c), A&E, CsS and William W. West have conspired and/or endeavored to violate the provisions of §16-14-4(a) and (b).
75. Pursuant to O.C.G.A. §16-14-6, A&E, CsS and William W. West are jointly and severally liable to Slone and Ebron for three times the actual damages incurred, punitive damages, attorneys' fees (in the event competent counsel are retained in this matter), investigative costs, and all other costs associated with or necessitated by the present litigation.
76. The above-described acts of perjury, subornation of perjury, and racketeering have caused and continue to cause Slone, Ebron and hundreds of other citizens of Clayton County to suffer irreparable injury, loss of reputation and pecuniary damages to be proved at trial. Unless enjoined by this Court, A&E, CsS and William W. West will continue these acts, thereby causing immediate and irreparable harm to other Clayton County citizens.

Count II – Forgery in the First Degree
(as to Bonnie Myers, Patricia Heatherington and William W. West)

77. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 76 as if the same were set forth herein in full.

78. Bonnie Myers, Patricia Heatherington and William W. West are jointly and severally liable to Slone and Ebron for acts of forgery in the first degree in using a rent check they knew or believed to be forged to support a dispossessory action against Slone and Ebron.
79. A person commits the offense of forgery in the first degree when, with intent to defraud, he knowingly makes, alters, or possesses any writing in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such writing. O.C.G.A. §16-9-1(a).
80. Pursuant to O.C.G.A. §16-9-1(a), Bonnie Myers, Patricia Heatherington and William W. West are jointly and severally liable to Slone and Ebron for the actual damages incurred, punitive damages, attorneys' fees (in the event competent counsel are retained in this matter), investigative costs, and all other costs associated with or necessitated by the present litigation.

Count III – Theft by Deception
(as to Bonnie Myers, Patricia Heatherington and William W. West)

81. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1

through 80 as if the same were set forth herein in full.

82. Bonnie Myers, Patricia Heatherington and William W. West are jointly and severally liable to Slone and Ebron for acts of theft by deception in using a rent check they knew or believed to be forged to support a dispossessory action against Slone and Ebron.

83. A person commits the offense of theft by deception when he obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property. O.C.G.A. §16-8-3(a).

84. Bonnie Myers and Patricia Heatherington are jointly and severally liable to Slone and Ebron for acts of theft by deception in causing A&E and William W. West to offer the altered rent check to the Clayton County Magistrate Court as evidence of Slone's and Ebron's failure to pay rent for April 2005.

85. A person deceives if he intentionally creates or confirms another's impression of an existing fact or past event which is false and which the accused knows or believes to be false. O.C.G.A. §16-8-3(b)(1).

86. Bonnie Myers, Patricia Heatherington and William W. West are jointly and severally liable to Slone and Ebron for an act of theft by deception in causing A&E to continue pursuing the dispossessory action in Clayton County

Superior Court after Slone and Ebron appealed the magistrate court's judgment.

87. A person deceives if he intentionally fails to correct a false impression of an existing fact or past event which he has previously created or confirmed. O.C.G.A. §16-8-3(b)(2).

88. Bonnie Myers is liable to Slone and Ebron for an act of theft by deception in failing to disclose the property owner's alteration of the rent check when directly asked to do so during her deposition.

89. A person deceives if he intentionally prevents another from acquiring information pertinent to the disposition of the property involved. O.C.G.A. §16-8-3(b)(c).

90. Pursuant to O.C.G.A. §16-8-3, Bonnie Myers, Patricia Heatherington and William W. West are jointly and severally liable to Slone and Ebron for the actual damages incurred, punitive damages, attorneys' fees (in the event competent counsel are retained in this matter), investigative costs, and all other costs associated with or necessitated by the present litigation.

Prayer for Relief

WHEREFORE, Plaintiffs' prayer for judgment against Defendants includes:

A. Preliminary and permanent injunctions enjoining A&E, CsS, William W. West and any affiliated persons or entities from committing acts of

perjury or subornation of perjury in dispossessory proceedings, pursuant to §16-14-6(a)(2);

B. Special and general damages in an amount to be proven at trial;

C. The trebling of damages for each and every violation of the Georgia RICO Act;

D. Punitive and exemplary damages in an amount to be proven at trial;

E. Reasonable attorneys' fees (in the event competent counsel is retained in this matter);

F. Costs of investigation and litigation;

G. Revocation of A&E's corporate charter, pursuant to §16-14-6(a)(5);

H. Revocation of the real estate broker's license held by Bonnie Myers, pursuant to §16-14-6(a)(4);

I. Maximum permissible sanction of William W. West, pursuant to §16-14-6(a)(4); and

J. Such other and further relief as this Court may deem just and proper.

Dated this 6th day of October, 2006

s/ Debra Slone / s/ Sonja Ebron

Debra Slone / Sonja Ebron
Plaintiffs, pro se
4601 2nd Avenue N
Saint Petersburg, FL 33713
(727) 368-5471

BEST AVAILABLE COPY

EXHIBIT A – CLAYTON COUNTY PATHO

MAGISTRATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

DISPOSSESSORY PROCEEDING

CLERK'S USE ONLY

_____
_____
_____
PLAINTIFF'S NAME & ADDRESS

_____
_____
_____
DEFENDANT'S NAME & ADDRESS

CASE NUMBER
2006CM_____

Personally appeared the undersigned affiant who on oath says that he/she is (owner), (agent), (attorney at law) for plaintiff herein, and that defendant(s) is (are) in possession as tenant of premises at said address as stated above, in Clayton County, the property of said plaintiff. FURTHER: (circle only one)

(a) THAT tenant fails to pay the rent which is now past due;
(b) THAT tenant holds the premises over and beyond the term for which they were rented or leased to tenant(s);
(c) THAT tenant is a tenant at sufferance;
(d) THAT _____; and plaintiff is entitled to recover any and all rent that may come due until the action is finally concluded.

Plaintiff desires and has demanded possession of the premises and Defendant has failed and refused to deliver said possession.

WHEREFORE, Plaintiff DEMANDS: (circle all that apply)

(a) possession of the premises; (b) past due rent of $_____; (c) rent accruing up to the date of judgment or vacancy at the rate of $_____ per day; (d)_____.

Sworn to and subscribed before me, this

_____ day of _____, 200_____.
Affiant

_____ ( )_____
Phone # w/ Area Code

By:_____
Deputy Clerk/ Notary Public

SUMMONS

TO THE SHERIFF OF CLAYTON COUNTY OR HIS LAWFUL DEPUTIES

GREETINGS: The defendant(s) is/are commanded and required to file an answer to said affidavit in writing or orally in person at the Magistrate Court of Clayton County, Jonesboro, Georgia on or before the seventh (7th) day after the date of service of the within affidavit and summons. EACH defendant is required to file an answer in his or her own name. If such an answer is not made, a Writ of Possession and/or Judgment may issue as provided by law.

Witness the Honorable Daphne M. Walker, Chief Judge of said Court.

This _____ day of _____, 200_____.

_____ Deputy Clerk

SHERIFF'S ENTRY OF SERVICE

I have served the foregoing affidavit and summons on the Defendant(s) by delivering a copy of same: ( )Personally ( )Notoriously (name) _____ ( )By posting a copy to the door of the premises and depositing a copy in the U.S. Mail, First Class in an envelope properly addressed, with adequate postage thereon, said copy containing notice to the Defendant(s) to answer at the place stated in said summons.

DATE OF SERVICE_____ _____ D/Sheriff

IMPORTANT NOTICE

Pursuant to Official Code of Georgia, Section 44-7-55(c), any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property; further, it provides that after execution of the writ, such property shall be regarded as abandoned.

Pursuant to Code of Clayton County, Georgia, Section 82-91 et. seq., if such personal property is not removed from the landlord's property within twenty-four (24) hours of the date and time of the execution of the writ of possession, and if the property otherwise is in violation of the county code, a citation for violation of the county code may issue against the plaintiff.

WRIT OF POSSESSION

To the Sheriff of Clayton County or his lawful deputies:

You are hereby commanded to remove said defendant together with defendant(s)' property thereon from said premises and to deliver full and quiet possession of the same to the plaintiff herein; effective 1.) Instanter or 2.) Seven days from the date of judgment; or 3.) Pursuant to the terms of a consent judgment filed herewith.

This _____ day of _____, 200_____.

_____
Judge, Magistrate Court of Clayton County

CERTIFICATE OF SERVICE

We hereby certify that we have this day served the opposing parties in the foregoing matter with a copy of this pleading:

1) for Bonnie Myers, by judicial summons in Fayette County to Bonnie Myers, 630 E. Lanier Avenue, Fayetteville, GA 30214;
2) for Patricia Heatherington, by judicial summons in Fayette County to Patricia Heatherington, 630 E. Lanier Avenue, Fayetteville, GA 30214;
3) for A&E Real Estate Sales and Management, Inc., by judicial summons in Fayette County to Bonnie Myers, 630 E. Lanier Avenue, Fayetteville, GA 30214;
4) for CsS Service, Inc., by judicial summons in DeKalb County to William P. Schwartz, CsS Services, Inc., 2785 Lawrenceville Highway, Suite 204, Decatur, GA 30033;
5) for William W. West, by judicial summons in Henry County to William W. West, 100 Corporate Center Drive, Suite A, Stockbridge, GA 30281.

Dated this 6th day of October, 2006

s/ Debra Slone / s/ Sonja Ebron

Debra Slone / Sonja Ebron
Plaintiffs, pro se
4601 2nd Avenue N
Saint Petersburg, FL 33713
(727) 368-5471

108

(3)

No. 08-20

Supreme Court, U.S.
FILED
JUL 28 2008
OFFICE OF THE CLERK

In the Supreme Court of the United States

DEBRA SLONE, SONJA EBRON,

Petitioners,

v.

BONNIE MYERS, PATRICIA HEATHERINGTON, A&E REAL ESTATE SALES AND MGMT., INC., CSS SERVICES, INC., WILLIAM W. WEST,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEVEN D. CALEY
Counsel of Record
WEISSMAN, NOWACK, CURRY & WILCO, P.C.
ONE ALLIANCE CENTER, 4TH FLOOR
3500 LENOX ROAD
ATLANTA, GA 30326
(404) 926-4500

LEGAL PRINTERS, Washington DC • 202-747-2400 • legalprinters.com

QUESTIONS PRESENTED

1.

Should the Court decline to grant the Petition where the state court of last resort has neither decided an important federal question nor decided a federal question in a manner that conflicts with another state court of last resort or a United States Court of Appeals?

2.

Should the Court decline to grant the Petition where the state appellate courts have neither decided an important question of federal law that has not been, but should be settled by this Court, nor have they decided an important federal question in a manner that is in conflict with relevant decisions of this Court?

3.

Should the Court decline to grant the Petition where a claim is not properly before this Court?

CORPORATE DISCLOSURE STATEMENT

There are no parent corporations, and there are no publicly held companies owning 10% or more of the stock of either Respondent A&E Real Estate Sales and Management, Inc. or Respondent CSS Services, Inc.

TABLE OF CONTENTS

Questions Presented i

Corporate Disclosure Statement ii

Table of Authorities v

Part One
Statement of the Case 1

Part Two
Reasons for Denying the Petition 4

1. The Supreme Court Lacks Jurisdiction To Grant the Writ of Certiorari Because The Georgia Court of Appeals Did Not Decide Any Federal Question, Let Alone an Important Federal Question 4

2. The Preclusion of Petitioners' State Law Tort Claims is Not Subject to Substantive Due Process Protection 5

3. The Preclusive Effect of Georgia's Abusive Litigation Procedure Does Not Violate The Due Process Clause of the Fourteenth Amendment 6

4. The Preclusive Effect of Georgia's Abusive Litigation Procedure Does Not Violate The Equal Protection Clause of the Fourteenth Amendment 9

5. Petitioners Lack Standing to Assert an Equal Protection Challenge to Georgia's

Attorney's Fees Statute Based Upon "Economic Status." 10

6. The Denial of Petitioners' Motion for Injunctive Relief Does Not Violate the Due Process Clause of the Fourteenth Amendment 10

Conclusion 12

TABLE OF AUTHORITIES

Cases

Adams v. Robertson, 520 U.S. 83, 117 S. Ct. 1028, 137 L.Ed.2d 203 (1997) 4

Bell v. Austin, 278 Ga. 844, 607 S.E.2d 569 (2005) .. 5

Board of Trustees v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L.Ed.2d 866 (2000) 9

Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L.Ed.2d 113 (1971) 7

City of Cuyahoga Falls Ohio v. Buckeye Cmty., 538 U.S. 188, 123 S.Ct. 1389, 155 L.Ed2d 349 11

Heller v. Doe, 509 U.S. 312, 113 S. Ct. 2637, 125 L.Ed.2d 257(1993) 9

Howell v. Mississippi, 543 U.S. 440, 125 S. Ct. 856, 160 L.Ed.2d 873 (2005) 4

Lasonde v. A&E Real Estate Sales & Management, Inc., 231 Ga.App. 754, 500 S.E.2d 636 (1998) 1

Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174,135 L.Ed.2d 606 (1996) 10

Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) 7

McKinney v. Pate, 20 F.3d 1550 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110, 115 S. Ct. 898, 130 L.Ed.2d 783 (1995) 6

Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 106 S. Ct. 507, 88 L.Ed.2d 523 (1985) 6, 11

Thomas v. Iowa, 209 U.S. 258, 28 S. Ct. 487, 52 L.Ed. 782 (1908)..... 4

U.S. v. Kras, 409 U.S. 434, 93 S. Ct. 631, 34 L.Ed. 2d 626 (1973)..... 6

Washington v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L.Ed.2d 772 (1997) 6, 7, 11

Statutes

O.C.G.A. § 9-15-14..... 3, 10

O.C.G.A. § 16-14-6..... 1

O.C.G.A. § 44-7-50(a) 1

O.C.G.A. § 51-7-84..... 2

O.C.G.A. § 51-7-85..... 2, 5

Constitutional Provisions

Ga. Const. Art. VI, §§ VI, Para. II 5

Supreme Court Rules

U.S. Sup. Ct. Rule 14 12

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

PART ONE

STATEMENT OF THE CASE

Petitioners Slone and Ebron failed to pay rent for their former residence. R.5, V2. Respondent CSS Services, Inc. filed a dispossessory affidavit against Petitioners listing Respondent A&E Real Estate Sales and Management as the plaintiff and erroneously stating in the preprinted body of the form that the premises were "... the property of said plaintiff." R.5, V2. Respondent A&E was in fact the agent of the owner of the rental property. Respondents have not been participants in false swearings in dispossessory actions filed in Clayton County, Georgia. Petitioners' factual summary to the contrary is a misstatement of fact. Moreover, contrary to Petitioners' argument, Georgia law allows an agent to pursue eviction on behalf of the landlord. O.C.G.A. § 44-7-50(a). *Lasonde v. A&E Real Estate Sales & Management, Inc.*, 231 Ga.App. 754, 500 S.E.2d 636 (1998) does not hold otherwise, only stating that an owner may be properly substituted for an agent in a dispossessory action. *Id.* at 754, 500 S.E.2d 638. After a hearing at which Respondent A&E was represented by Respondent attorney William West, the Magistrate ruled against Petitioners. R.13-16, V2. An allegedly "forged" check was introduced into evidence at the hearing. Someone had stricken through "May" and substituted "April" on the check indicating the month to which the rent check was to apply. Petitioners appealed to the Superior Court and asserted a counterclaim against Respondents for "forgery," "theft by taking," and for violation of the Georgia RICO Act, O.C.G.A. § 16-14-6.

R.19-21, V2. During the pendency of the Superior Court appeal, Petitioners surrendered the premises and moved to Florida. The Superior Court appeal was dismissed for failure to join the owner. R.26-28, V2.

Petitioners thereafter unsuccessfully reasserted their *pro se* state law tort action for "forgery," "theft by taking," and violation of the Georgia RICO Act against the Respondents seeking a myriad of remedies including treble damages, punitive damages, revocation of A&E's corporate charter and Myers' real estate broker's license, disbarment of West, and injunctive relief. Petitioners' claims were based upon the alleged predicate criminal acts of perjury for the filing of a form dispossessory affidavit which listed Respondent A&E as owner of the property rather than agent for the owner, forgery based upon the introduction of a check into evidence upon which someone other than the Respondents wrote the month for which the rent check was to apply, and theft by taking for stealing possession of the rental property from them.

The Superior Court ruled that Petitioners' claim arose from acts occurring during litigation and therefore Petitioners were required to pursue the exclusive remedy of an abusive litigation claim against Respondents under O.C.G.A. § 51-7-85. The Superior Court ruled an abusive litigation claim was procedurally barred by Petitioners' failure to provide the safe harbor notice letter required by O.C.G.A. § 51-7-84. The required notice letter affords the allegedly offending abusive litigator an opportunity to discontinue the offensive conduct without liability. The Superior Court also ruled the Petitioners' claims

were frivolous and awarded attorney's fees to Respondents under O.C.G.A. § 9-15-14.

Thereafter, Petitioners, who had long since moved to Florida, filed an Application for Temporary Restraining Order and Motion for Interlocutory Injunction against A&E. Petitioners sought to enjoin A&E from filing allegedly fraudulent dispossessory affidavits in actions against tenants other than Petitioners. The Superior Court ruled that the Petitioners, who lived out of state and presented no evidence or allegations that they were the subject of current or future dispossessory actions in Clayton County, Georgia, lacked standing to pursue injunctive relief. The Superior Court denied Petitioners' application and motion for injunctive relief. R. 218.

Petitioners did not argue in the Superior Court that the abusive litigation, attorney's fees, and injunctive relief statutes violated the Due Process or Equal Protection Clauses of the Fourteenth Amendment. In fact, Petitioners did not raise a constitutional challenge, or a federal question of any kind in the Superior Court, nor did the Superior Court decide any constitutional or federal question. The Georgia Court of Appeals affirmed. Again Petitioners did not raise any meaningful constitutional challenge or federal question in the Georgia Court of Appeals, nor did the Georgia Court of Appeals rule on any constitutional challenge or federal question. The Georgia Supreme Court denied Petitioners' petition for certiorari without opinion.

PART TWO
REASONS FOR DENYING THE PETITION

1. The Supreme Court Lacks Jurisdiction to Grant the Writ of Certiorari Because The Georgia Court of Appeals Did Not Decide Any Federal Question, Let Alone An Important Federal Question.

Petitioners have the burden of showing that the federal issue they raise was properly presented to the Georgia Supreme Court, the highest state court. When the highest state court is silent on a federal question, the Supreme Court assumes that the issue was not properly presented. The aggrieved party bears the burden of defeating this assumption, by demonstrating that the state court had a fair opportunity to address the federal question. *Adams v. Robertson*, 520 U.S. 83, 86, 117 S. Ct. 1028, 1029, 137 L.Ed.2d 203 (1997).

Petitioners' vague and generalized arguments, and citations to "due process" in the Georgia appellate courts are not sufficient to properly raise and preserve a constitutional challenge. *Howell v. Mississippi*, 543 U.S. 440, 443, 125 S. Ct. 856, 858, 160 L.Ed.2d 873 (2005); *Thomas v. Iowa*, 209 U.S. 258, 263, 28 S. Ct. 487, 488, 52 L.Ed. 782 (1908). Petitioners never raised any enumeration of error, or made any argument whatsoever, in the state courts relating to substantive due process, access to courts, equal protection, economic status, or discriminatory application of the state statutes involved.

Indeed, if the Georgia Court of Appeals had believed that the Petitioners had called into question

the constitutionality of the abusive litigation, attorney's fees, and injunctive relief statutes, it would have transferred the appeal to the Georgia Supreme Court. *See e.g., Bell v. Austin*, 278 Ga. 844, 607 S.E.2d 569 (2005). The Georgia Supreme Court has exclusive appellate jurisdiction of "... all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn in question." Ga. Const. Art. VI, §§ VI, Para. II.

Petitioners have failed to show that the Georgia Court of Appeals or Georgia Supreme Court decided an important federal question in a manner which conflicts with another state court of last resort or a United States Court of Appeals, or that the Georgia appellate courts decided an important federal question that has not been, but should be, settled by the Supreme Court. Accordingly, the Supreme Court lacks jurisdiction to review this case by writ of certiorari. The petition for writ of certiorari should be denied for want of jurisdiction.

2. The Preclusion of Petitioners' State Law Tort Claims Is Not Subject to Substantive Due Process Protection.

Petitioners complain of the dismissal of their "forgery," "theft by taking," and Georgia RICO claims based upon the preclusive effect of the exclusive remedy provision of Georgia's abusive litigation claim contained in O.C.G.A. § 51-7-85. Petitioners argue that they have a property interest in these state tort claims, the dismissal of which constituted a substantive due process violation.

The substantive component of the Due Process Clause provides protection from government interference with fundamental rights and liberty interests. *Washington v. Glucksberg*, 521 U.S. 702, 719, 117 S. Ct. 2258, 2267, 138 L.Ed.2d 772 (1997). Where substantive rights are created only by state law, such as tort claims, they are not subject to substantive due process protection. Substantive due process rights are created only by the Constitution. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229, 106 S. Ct. 507, 515, 88 L.Ed.2d 523 (1985) (Powell, J., concurring); *McKinney v. Pate*, 20 F.3d 1550, 1560 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110, 115 S. Ct. 898, 130 L.Ed.2d 783 (1995). The preclusion of Petitioners' state tort claims, which are precluded by a statutorily created state tort claim, simply does not amount to government interference with a fundamental right. Accordingly, the petition for writ of certiorari should be denied.

3. The Preclusive Effect of Georgia's Abusive Litigation Procedure Does Not Violate the Due Process Clause of the Fourteenth Amendment.

Petitioners argue that the preclusion of Petitioners' state tort claims, which is precluded by a statutorily created state abusive litigation claim, constitutes a substantive due process violation and denies Petitioners access to courts. However, the preclusion of Petitioners' state law tort claims of "forgery," "theft by taking," and Georgia RICO does not implicate a fundamental constitutionally protected interest. *U.S. v. Kras*, 409 U.S. 434, 445, 93 S. Ct. 631, 638, 34 L.Ed. 2d 626 (1973). The Petitioners had the right to avail themselves of the abusive litigation procedure if they so desired.

Further, the Due Process Clause of the Fourteenth Amendment does not entitle every civil litigant to a hearing on the merits in every case. Georgia's requirement of the safe harbor notice letter to trigger the right to raise an abusive litigation claim is a reasonable procedural requirement. Georgia may terminate an abusive litigation claim for failure to comply with this reasonable procedural rule without offending the right to access to courts afforded by due process. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S. Ct. 1148, 1158, 71 L.Ed.2d 265 (1982); *Boddie v. Connecticut*, 401 U.S. 371, 378-379, 91 S. Ct. 780, 28 L.Ed. 2d 113 (1971).

The preclusive effect of the abusive litigation procedure does not constitute a substantive due process violation. Where, as here, a statute does not infringe upon a fundamental right, due process analysis is performed under the "rational basis test." Under this test, a statute will be upheld in the face of a due process attack so long as it is rationally related to legitimate government interests. *Washington v. Glucksberg*, 521 U.S. 702, 728 S. Ct. 2258, 2271, 138 L.Ed.2d 772 (1997). The preclusive effect of the abusive litigation procedure is rationally related to Georgia's interests in discouraging frivolous litigation and is the final termination of litigation. Otherwise, a disappointed civil litigant, such as Petitioners in the instant case, could pursue an abusive litigation or similar action following the termination of the underlying litigation in any case. The disappointed litigants could claim, as the Petitioners did in the instant case, that the other party perjured itself or committed other abusive acts during the underlying litigation and start the litigation anew. Certainly,

Georgia has a legitimate government interest in preventing never-ending civil litigation.

Georgia also has a legitimate government interest in discouraging frivolous litigation as conceded by Petitioners. (Petition p.13). Petitioners' claims in this action are the type of frivolous claims which should be discouraged. To reiterate, Petitioners' claims are based upon alleged perjury by using a form dispossessory affidavit which stated the plaintiff was the owner rather than an agent, and the introduction into evidence of a check on which Petitioners claim someone had changed the month for which it was to apply. Petitioners have never shown how they were damaged by the alleged "perjury" or "forgery."

In fact, Petitioners failed to pay their rent as it came due, and then voluntarily vacated the premises during the pendency of their Superior Court appeal. The instant petition for certiorari is nothing more than a continuation of Petitioners' patently frivolous claims, which Georgia certainly has an interest in curbing. The petition for writ of certiorari should be denied because the preclusive effect of Georgia's abusive litigation procedure does not violate Petitioners' right of access to the courts, or otherwise constitute a substantive due process violation.

4. The Preclusive Effect of Georgia's Abusive Litigation Procedure Does Not Violate the Equal Protection Clause of the Fourteenth Amendment.

Petitioners next argue that the preclusive effect of Georgia's abusive litigation procedure violates the Equal Protection Clause of the Fourteenth Amendment. Petitioners claim that creating a class of persons who are precluded by the abusive litigation statutes from pursuing an otherwise justiciable state tort claim that rose during litigation is a violation of the Equal Protection Clause.

Because the complained of classification does not involve a suspect class or a fundamental right, the classification is subject to rational-basis review. Under rational-basis review, where a group possesses distinguishing characteristics relevant to interests the State has the authority to implement, a State's decision to act on the basis of those differences does not give rise to a constitutional violation. Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. *Board of Trustees v. Garrett*, 531 U.S. 356, 366-67, 121 S. Ct. 955, 963-964, 148 L.Ed.2d 866 (2000); *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 2642, 125 L.Ed.2d 257 (1993). The burden is upon the challenging party to negate any reasonably conceivable state of facts that could provide a rational basis for the classification. *Board of Trustees v. Garrett*, 531 U.S. 356, 367, 121 S. Ct. 955, 964, 148 L.Ed.2d 866 (2000). Petitioners cannot carry this burden. The classification they complain of, those persons who are unable to pursue state tort claims

because the claims arose during litigation, is rationally related to Georgia's interest in discouraging frivolous litigation and is the final termination of civil litigation as shown above. The petition for writ of certiorari should be denied because the preclusive effect of Georgia's abusive litigation procedure does not constitute an equal protection violation.

5. Petitioners Lack Standing to Assert an Equal Protection Challenge to Georgia's Attorney's Fees Statute Based Upon "Economic Status."

Petitioners also assert an equal protection challenge to the Georgia attorney's fees statute, O.C.G.A. § 9-15-14. Petitioners' argue that the statute discriminates based upon "economic status." However, Petitioners lack standing to pursue this challenge. There is nothing in the record, and Petitioners have never alleged, that they are financially unable to pay the awarded attorney's fees. They have not set forth any evidence or argument of an injury they have suffered as a result of discrimination based upon "economic status." Therefore Petitioners are not adversely affected by the Georgia attorney's fees statute because of their "economic status," and they lack standing to assert this challenge. *Lewis v. Casey*, 518 U.S. 343, 357-358, 116 S. Ct. 2174, 2183, 135 L.Ed.2d 606 (1996). The petition for writ of certiorari should be denied for this additional reason.

6. The Denial of Petitioners' Motion for Injunctive Relief Does Not Violate the Due Process Clause of the Fourteenth Amendment.

Petitioners argue that they had a property

interest in their Georgia RICO cause of action, and that the denial of injunctive relief to protect that purported claim violated their substantive due process rights. Petitioners' argument is without merit. Government action violates one's substantive due process rights only where the action deprives an individual of those fundamental rights and liberty interests that are protected by the Fourteenth Amendment. *See e.g., City of Cuyahoga Falls Ohio v. Buckeye Cmty.,* 538 U.S. 188, 200, 123 S.Ct. 1389, 1397, 155 L.Ed2d 349 (Scalia, J., concurring); *Washington v. Glucksberg,* 521 U.S. 702, 719-721, 117 S.Ct. 2258, 2267-2268 138 L.Ed.2d 772 (1997). Substantive due process rights, however, are created by the Constitution. *See Regents of Univ. of Mich. v. Ewing,* 474 U.S. 214, 229, 106 S. Ct. 507, 515, 88 L.Ed.2d 523 (1985). As Respondents have shown in Section 2 *supra,* the preclusion of Petitioners' state tort claim is not a violation of a fundamental right and does not give rise to a substantive due process violation. Likewise, the denial of injunctive relief to "protect" Petitioners' state tort claim is not a substantive due process violation. Petitioners' injunctive efforts were directed toward A&E's alleged misconduct in initiating legal proceedings to evict tenants other than Petitioners. The trial court held and the Georgia Court of Appeals agreed that the Petitioners, who had moved out of state, had no standing to pursue injunctive relief. The rulings of the trial court and Georgia Court of Appeals do not trigger a substantive due process violation. Consequently, the petition for writ should be denied.

Further, the Petitioners failed to raise the denial of their motion for injunctive relief as a question presented for review, and therefore the Court should

not consider that portion of the petition. Pursuant to the Supreme Court Rules, "[o]nly questions set out in the petition, or fairly included therein, will be considered by the Court." *U.S. Sup. Ct. Rule 14, subd. 1(a).* The Petitioners did not identify the denial of their motion for injunctive relief as a question for the Court to review, nor is this issue fairly included in the questions presented. The petition should be denied.

CONCLUSION

As the Petitioners are proceeding pro se and without citation to legal authority, it is difficult to identify and respond to any purported federal issues. However, it is clear that Petitioners did not obtain a ruling from the Georgia trial or appellate courts on any due process, equal protection or other federal question. Therefore, the Supreme Court lacks jurisdiction to review this case by writ of certiorari.

Even if the federal questions had been preserved for review, the petition should nonetheless be denied. The procedural default or preclusion of state tort claims and the denial of injunctive relief are not subject to review under substantive due process. Moreover, Petitioners do not have standing to mount an equal protection challenge to the Georgia attorney's fees statute on the ground of "economic status."

Petitioners have not made a coherent argument for the issuance of a writ of certiorari, and their petition should be denied.

Respectfully submitted,

Steven D. Caley
Counsel of Record
Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, GA 30326
(404) 926-4500

103

(2)

FILED
AUG 12 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

U.S. Supreme Court No. 08-20

In the Supreme Court of the United States

DEBRA SLONE
SONJA EBRON,
Petitioners,

vs.

BONNIE MYERS
PATRICIA HEATHERINGTON
A&E REAL ESTATE SALES AND MGMT, INC.
CSS SERVICES, INC.
WILLIAM W. WEST,
Respondents.

On Petition for Writ of Certiorari
to the Georgia Court of Appeals
(Georgia Court of Appeals
Cases A07A1089, A07A1406, A07A2274)

PETITIONERS REPLY TO BRIEF IN OPPOSITION

DEBRA SLONE
SONJA EBRON
Petitioners, pro se
14718 Daybreak Drive
Lutz, FL 33559
Telephone: 813-442-6375
Date: August 11, 2008

TABLE OF CONTENTS

Table of Authorities iii

Reply to Respondents' Factual Statements 1

Reply to Respondents' Arguments 2

A. The Issue Is Preserved. 2

B. This Important Federal Question Of First Impression Merits Review 4

1. The question implicates limits on the judiciary. 4

2. Georgia's abusive litigation regimen is unique. 4

C. Application Of The Statutes Is Not Rationally Related To Legitimate State Interest 6

Conclusion 11

TABLE OF AUTHORITIES

CASES

Adams v. Robertson, 520 U.S. 83; 117 S. Ct. 1028 (1997) .2
Dee v. Sweet, 218 Ga. App. 18; 460 S.E.2d 110 (1995) 8
DeKalb County v. Adams, 263 Ga. App. 201; 587 S.E. 2d 302 (2003).....10
Denton v. Browns Mill Development Company, Inc., 275 Ga. 2; 561 S.E.2d 431 (2002).....6
DeRossett Enterprises, Inc. v. General Electric Capital Corporation, 275 Ga. App. 728; 621 S.E.2d 755 (2005).....10
Devaney v. Thriftway Mktg. Corp., 124 N.M. 512; 1998 NMSC 1; 953 P.2d 277 (1997).....5
Ellis v. Johnson, 263 Ga. 514; 435 S.E.2d 923 (1993).....10
Ferguson v. Wesley College, Inc., C.A. No. 99C-07-109 WTQ; Del. Super. LEXIS 146 (2000).....5
Fuller v. Local Union No. 106, 567 N.W.2d 419, 421 (1997).....5
Gilbert v. Ince, 1999 UT 65; 981 P.2d 841, 845 (1999).....5
Greywolf v. Carroll, 151 P.3d 1234 (2007).....5
H.J. Russell & Company v. Manuel, 264 Ga. App. 273; 590 S.E.2d 250 (2003).....10
Ibrahim v. Talley & Associates, P.C., 214 Ga. App. 609; 448 S.E.2d 707 (1994).....8
Long v. Long, 136 N.H. 25; 611 A.2d 620, 623 (1992).....5
Marbury v. Madison, 5 U.S. (1 Cranch) 137; 2 L. Ed. 60 (1803).....9
McShares, Inc. v. Barry, 266 Kan. 479; 970 P.2d 1005 (1998).....5
Nairon v. Land, 242 Ga. App. 259; 529 S.E.2d 390 (2000).....8
New York ex rel. Bryant v. Zimmerman, 278 U.S. 63; 49 S. Ct. 61 (1928) 3

TABLE OF AUTHORITIES, continued

Phillips v. MacDougald, 219 Ga. App. 152; 464 S.E. 2d 390 (1995) 8
Preisner v. MacQueen, 177 W. Va. 273; 352 S.E.2d 22 (1985) 5
Rains v. Dolphin Mortgage Corporation, 241 Ga. App. 611; 525 S.E.2d 370 (1999) 8
Rosen v. American Bank of Rolla, 426 Pa. Super. 376; 627 A.2d 190, 192 (1993) 5
Stern v. Thompson & Coates, Ltd., 185 Wis.2d 220; 517 N.W.2d 658 (1994) 5
Stoneridge Investment Partners v. Scientific-Atlanta, 128 S. Ct. 761; 169 L. Ed. 2d 627 (2008) 9
Street v. New York, 394 U.S. 576; 89 S. Ct. 1354 (1969) ... 3
Taylor v. Gelfand, 233 Ga. App. 835; 505 S.E.2d 222 (1998) 8
Webb v. State Automobile Insurance Company, 198 Ga. App. 609; 402 S.E.2d 352 (1991) 8

STATUTES

Official Code of Georgia Ann. § 9-15-14 9
Official Code of Georgia Ann. § 9-15-14(a) 10
Official Code of Georgia Ann. § 9-15-14(b) 10
Official Code of Georgia Ann. § 51-7-84 7
Official Code of Georgia Ann. § 51-7-85 7

REPLY BRIEF OF PETITIONERS

Petitioners respectfully reply to Respondents' brief. Petitioners asked for review of a state appellate court decision affirming dismissal of their claims against Respondents and affirming a sanction of attorney's fees for filing the claims. Petitioners argued that the decisions were arbitrary and capricious and that Petitioners were treated differently than similarly situated persons.

Reply to Respondents' Factual Statements

There are no factual disputes relevant to the issue presented for review – whether Georgia applied its abusive litigation and attorney's fees statutes unconstitutionally in this case. The following facts are undisputed:

- Petitioners sued Respondents for forgery, theft and Georgia RICO violations occurring in a prior dispossessory action against Petitioners, in which Respondents' claim was dismissed for lack of standing.
- As a matter of law, the trial court precluded Petitioners' claims with an unasserted claim for abusive litigation and dismissed the case for failure of notice, a condition precedent to an abusive litigation claim.
- Subsequent to dismissal, the trial court awarded attorney's fees to Respondents in both the prior dispossessory action and the instant case without affording Petitioners an opportunity to evince substantial justification for their claims.

- The trial court denied Petitioners' request for injunctive relief to protect the viability of their claims on appeal, finding Petitioners lacked standing due to their relocation out of state.
- The appellate court affirmed the dismissal, the denial of equitable relief, and the second award of attorney's fees, remanding the first for a hearing.

Disputes regarding Petitioners' payment of rent in the dispossessory action and Respondents' liability in the instant case are not relevant to this Court's review of the Petition.

Reply to Respondents' Arguments

A. The Issue Is Preserved.

Respondents argue that Petitioners failed to properly raise and preserve a federal constitutional challenge in state courts, asserting that Petitioners have not borne their burden under *Adams v. Robertson*, 520 U.S. 83; 117 S. Ct. 1028 (1997) of showing that the state court had a fair opportunity to address the federal question presented, and thus the Court lacks jurisdiction to grant the Petition. *Br. of Resp.*, p. 4-5. Petitioners' burden under *Adams* has been met. The Petition contains numerous quotations from Petitioners' state court briefs raising constitutional challenges, including explicit references to due process and equal protection. *Br. of Pet.*, p. 7-11. One of the questions presented to the Georgia Supreme Court in a petition for writ of certiorari asked specifically whether Petitioners had been denied access to Georgia's courts. *Pet. for Writ*

of Cert., Supreme Court of Georgia, Case No. S08C0413, p. ii. The entire trajectory of Petitioners' appellate arguments was that an arbitrary, discriminatory and unauthorized use of state statutes had occurred in this case.

There is no requirement that specific language be used to raise federal constitutional challenges if Petitioners' intentions are clear. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63; 49 S. Ct. 61 (1928) ("There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefore be brought to the attention of the state court with fair precision and in due time. And, upon appeal, if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented."). While no state court explicitly ruled on a federal question, Petitioners have shown through voluminous citations to their arguments that the state courts had a fair opportunity to decide the question presented to this Court. *Br. of Pet.*, p. 7-11. In the face of Petitioners' arguments below, the state appellate court implicitly ruled that dismissal of their claims and sanctions for raising them – in opposition to controlling statutory and case authority – were consonant with Petitioners' due process and equal protection rights. *Street v. New York*, 394 U.S. 576; 89 S. Ct. 1354 (1969) ("Of course the decision must have been against the claim of invalidity, but it is not necessary that the ruling shall have been put in direct terms. If the necessary effect of the judgment has been to deny

the claim, that is enough."). The state appellate court cannot avoid this Court's review by refusing to directly address Petitioners' constitutional challenges.

B. This Important Federal Question Of First Impression Merits Review.

The question implicates limits on the judiciary.

Respondents argue that Petitioners failed to show that a Georgia court decided an important federal question. *Br. of Resp.*, p. 5. In essence, the question presented is whether Petitioners have the right to assert and prosecute thoughtfully chosen tort claims without arbitrary substitution and sanction. Where these rights go unrecognized, the judiciary can willy-nilly make cases not presented by arbitrarily restating litigants' claims, thereby assuming a function of the legislature. The Fourteenth Amendment prevents this usurpation of power.

Georgia's abusive litigation regimen is unique.

Georgia's isolation also adds gravity and significance to this case. A claim for abuse of process is the generally accepted remedy for malicious and unjustified acts of litigation. Restatement (Second) of Torts 682 (1997). While laws against abuse of process are used nationally to curtail frivolous lawsuits that clog the legal system, most states are reluctant to introduce statutes that might discourage citizens from using the judicial system to settle their disputes. Forty states require a showing of willful pursuit of ulterior purpose to assert a proper claim

for abuse of process. Alaska is typical: "The Restatement (Second) of Torts defines abuse of process as the misuse of a legal process against another primarily to accomplish a purpose for which it was not designed. Alaska requires two elements for the claim: (1) ulterior purpose independent from the process, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *Greywolf v. Carroll*, 151 P.3d 1234 (2007).

Of the remaining states, Iowa, New Hampshire, Pennsylvania and Utah use more specific language, requiring a showing that the nonmovant used a legal process "primarily to accomplish a purpose for which it is not designed." *Fuller v. Local Union No. 106*, 567 N.W.2d 419, 421 (1997); *Long v. Long*, 136 N.H. 25; 611 A.2d 620, 623 (1992); *Rosen v. American Bank of Rolla*, 426 Pa. Super. 376; 627 A.2d 190, 192 (1993); *Gilbert v. Ince*, 1999 UT 65; 981 P.2d 841, 845 (1999). Delaware, Kansas, New Mexico and West Virginia require an improper act in the use of process to accomplish an illegal, perverted or wrongful end. *Ferguson v. Wesley College, Inc.*, C.A. No. 99C-07-109 WTQ; Del. Super. LEXIS 146 (2000); *McShares, Inc. v. Barry*, 266 Kan. 479; 970 P.2d 1005 (1998); *Devaney v. Thriftway Mktg. Corp.*, 124 N.M. 512; 1998 NMSC 1; 953 P.2d 277 (1997); *Preisner v. MacQueen*, 177 W. Va. 273; 352 S.E.2d 22 (1985). Wisconsin requires a further showing that a claim was "without any reasonable basis in law or equity." *Stern v. Thompson & Coates, Ltd.*, 185 Wis.2d 220; 517 N.W.2d 658 (1994).

Excepting the safe harbor language in Federal Rules of Civil Procedure 11, only Georgia adds a

notice requirement and an exclusive remedy to its abuse of process or "abusive litigation" regimen. As a derogation of the common law, Georgia recognizes that its abusive litigation statutes must be strictly construed. *Denton v. Browns Mill Development Company, Inc.*, 275 Ga. 2; 561 S.E.2d 431 (2002). Petitioners contend the exclusive remedy provision was so liberally construed in this case as to offend the federal constitution. The instant case is one of first impression that merits this Court's review.

C. Application Of The Statutes Is Not Rationally Related To Legitimate State Interest.

Petitioners have asserted that the state court rulings were arbitrary and capricious in violation of substantive due process provisions. Petitioners have also asserted that the state court rulings treated Petitioners differently than similarly situated persons in violation of equal protection provisions. (Petitioners challenge the application of the statutes, not the statutes themselves.) Respondents argue that the state court rulings do not violate either the due process or equal protection clauses of the Fourteenth Amendment because the statutes are rationally related to legitimate state interests. *Br. of Resp.*, p. 6-10.

Respondents do not dispute that the factual allegations in Petitioners' complaint (the only evidence presented) did not meet the statutory elements of abusive litigation, and that neither the trial court nor the appellate court found an abusive litigation claim in Petitioners' complaint, both finding the abusive litigation regimen applicable

solely because the torts arose in prior civil litigation.[1] While Georgia statutes provide an exclusive remedy for claims of malicious and unjustified acts of litigation, there is no statutory or case authority in Georgia law that permits the preclusion of tort claims not predicated on an abusive litigation claim. Nowhere does the mere commission of a tort in civil litigation provide sufficient rationale to apply the abusive litigation regimen to the resulting claims, except in the instant case.

Petitioners agree with Respondents that disparate treatment of parties damaged by acts of malicious and unjustified civil litigation is rationally related to a legitimate governmental interest. However, disparate treatment of parties damaged by acts of civil litigation – whether justified or not – bears no rational relationship to a legitimate governmental interest. Petitioners contend the creation of this class, seen only in the instant case, violates the Fourteenth Amendment's provisions for substantive due process and equal protection.

Respondents do not dispute that the decision to preclude claims based in factual allegations by an unasserted claim not based in fact was arbitrary and capricious, or that the decision to dismiss that unasserted claim for failure of notice was arbitrary and capricious, or that the decision to sanction

[1] Respondents summarize the decision best: "The Superior Court ruled that Petitioners' claim arose from acts occurring during litigation and therefore Petitioners were required to pursue the exclusive remedy of an abusive litigation claim against Respondents under O.C.G.A. § 51-7-85. The Superior Court ruled an abusive litigation claim was procedurally barred by Petitioners' failure to provide the safe harbor notice letter required by O.C.G.A. § 51-7-84." *Br. of Resp.*, p. 2.

Petitioners for asserting claims grounded in their factual allegations was arbitrary and capricious. Petitioners do not seek review of the injunction decision, except to note that the denial of injunctive relief based on a mischaracterization of the property sought to be protected epitomized the arbitrary and capricious nature of the rulings in this case. Respondents also do not dispute that the decision to subject Petitioners' claims to the abusive litigation regimen solely on the basis that such claims arose in prior litigation differs from the treatment of similarly situated Georgia persons. Compare *Dee v. Sweet*, 218 Ga. App. 18; 460 S.E.2d 110 (1995) and *Rains v. Dolphin Mortgage Corporation*, 241 Ga. App. 611; 525 S.E.2d 370 (1999) (where civil RICO claims predicated on torts occurring in prior litigation were not precluded); *Phillips v. MacDougald*, 219 Ga. App. 152; 464 S.E.2d 390 (1995) and *Nairon v. Land*, 242 Ga. App. 259; 529 S.E.2d 390 (2000) (where claims were precluded upon showing predication on abusive litigation claims); *Webb v. State Automobile Insurance Company*, 198 Ga. App. 609; 402 S.E.2d 352 (1991) and *Taylor v. Gelfand*, 233 Ga. App. 835; 505 S.E.2d 222 (1998) (where asserted claims were adjudicated on merits even though allegations met the elements of abusive litigation); *Ibrahim v. Talley & Associates, P.C.*, 214 Ga. App. 609; 448 S.E.2d 707 (1994) (where claim for forgery occurring in litigation was adjudicated on the merits despite factual allegations meeting all elements of abusive litigation).

To reiterate, there is no rational government interest in disparate treatment of a class of civil defendants injured in substantially justifiable litigation. Members of such a class have no remedies

for the wrongs they have suffered. That is, a wrongful act committed against a party to substantially justified civil litigation has no remedy under current Georgia law. As Justice Stevens recently noted, "A basic principle animating our jurisprudence was enshrined in state constitution provisions guaranteeing, in substance, that 'every wrong shall have a remedy.' Fashioning appropriate remedies for the violation of rules of law designed to protect a class of citizens was the routine business of judges." *Stoneridge Investment Partners v. Scientific-Atlanta*, 128 S. Ct. 761; 169 L. Ed. 2d 627 (2008), dissenting opinion *(citing Marbury v. Madison*, 5 U.S. (1 Cranch) 137; 2 L. Ed. 60 (1803)).

Likewise, the application of the attorney's fees statute in this case bore no rational relationship to a legitimate government interest. Attorney's fees are assessed against parties found to have filed claims or taken positions lacking in substantial justification or for purposes of delay or harassment. Official Code of Georgia Ann. § 9-15-14 is rationally related to the state's interest in maintaining efficient and orderly courts. However, there can be no rational relationship between this legitimate governmental interest and the assessment of sanctions with no showing of sanctionable conduct.

Respondents do not dispute that no evidence supporting the sanctioned claims was allowed or reviewed by the court, or that Respondents presented no evidence of lack of substantial justification for Petitioners' claims. Nor do Respondents dispute that attorney's fees were assessed in this case in conflict with voluminous state case law, being arbitrary and capricious and evincing disparate treatment of

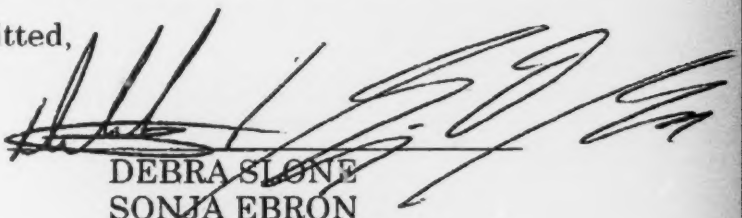
similarly situated persons. While Official Code of Georgia Ann. § 9-15-14(b) provides that attorney's fees may be awarded only to parties to the litigation, the state appellate court declined to reverse an award of attorney's fees to Respondent West in the dispossessory action, where West was a non-party. *Order of the Georgia Court of Appeals*, p. 9. (See also *Br. of Pet.*, p. A9.) While Official Code of Georgia Ann. § 9-15-14(a) provides mandatory sanctions for a claim completely lacking in any justiciable issue, the state appellate court affirmed awards under this statute based on the lesser standard for discretionary awards provided by Official Code of Georgia Ann. § 9-15-14(b). *Order of the Georgia Court of Appeals*, p. 13. (See also *Br. of Pet.*, p. A13.)

The state appellate court affirmed these awards without referencing any evidence of sanctionable conduct. *Order of the Georgia Court of Appeals*, p. 13. (See also *Br. of Pet.*, p. A13.) Again, awards under Official Code of Georgia Ann. § 9-15-14(a) must be supported by specific findings of sanctionable conduct. *DeKalb County v. Adams*, 263 Ga. App. 201; 587 S.E.2d 302 (2003); *DeRossett Enterprises, Inc. v. General Electric Capital Corporation*, 275 Ga. App. 728; 621 S.E.2d 755 (2005); *H.J. Russell & Company v. Manuel*, 264 Ga. App. 273; 590 S.E.2d 250 (2003). No award of attorney's fees is justified where there is arguable support for the sanctioned position. *Ellis v. Johnson*, 263 Ga. 514; 435 S.E.2d 923 (1993). There is no rational relationship between the application of the attorney's fees statute in this case and any legitimate state interest.

Conclusion

The Court should grant the petition for certiorari.

Respectfully submitted,



DEBRA SLONE
SONJA EBRON
Petitioners, pro se
14718 Daybreak Drive
Lutz, FL 33559
Telephone: 813- 442-6375

Date: August 11, 2008